of the United States to consider their resolution with reference to child labor; to the Committee on Labor.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BULWINKLE: A bill (H. R. 9330) granting an increase of pension to Ethel Brimer Byington; to the Committee on Invalid Pensions.

By Mr. JENKINS of Ohio: A bill (H. R. 9331) granting a pension to Elizabeth C. Hartinger; to the Committee on Pensions.

By Mr. OLIVER: A bill (H. R. 9332) for the relief of Thomas A. Sears; to the Committee on Naval Affairs.

By Mr. REECE of Tennessee: A bill (H. R. 9333) granting a pension to Elmer J. Rush; to the Committee on Pensions.

By Mr. RUTHERFORD: A bill (H. R. 9334) granting a pension to Stella Viola Ruckel; to the Committee on Invalid Pensions.

By Mr. SACKS: A bill (H. R. 9335) for the relief of John Raia; to the Committee on Immigration and Naturalization.

By Mr. SCHNEIDER of Wisconsin: A bill (H. R. 9336) for the relief of Erwin Cleveland; to the Committee on Military Affairs.

By Mr. SOUTH: A bill (H. R. 9337) for the relief of Robert Young Watkins; to the Committee on War Claims.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

3955. By Mr. CARTER: Petition of the Motor Carriers' Association of California, urging the repeal of the emergency levies on gasoline and lubricating oils; to the Committee on Ways and Means.

3956. By Mr. HART: Petition of the Hudson County Allied Printing Trades Council, Hoboken, N. J., urging that the committee take no action which would remove from the Government Printing Office any work now being done by the printing-trades workers who are there employed; to the Committee on Printing.

3957. Also, petition of the International Allied Printing Trades Association, supporting the contention of the printing-trades unions that patent specifications and Gazette should be done in the Government Printing Office; that unauthorized printing in the departments should be limited and regulated; to the Committee on Printing.

3958. Also, petition of sundry citizens of Hudson County, N. J., urging the establishment of a 5-day week for Federal employees, and further urging that a Government employee may appeal discriminatory acts of his superiors to a referee mutually satisfactory to himself and the Civil Service Commission; to the Committee on the Civil Service.

3959. Also, petition of the One Hundred and Sixty-second Legislature of the State of New Jersey, Trenton, N. J., memorializing and requesting that Congress take the necessary steps to further improve the facilities and equipment of the naval air station at Lakehurst; to the Committee on Naval Affairs.

3960. By Mr. KEOGH: Petition of the Allied Printing Trades Council of Greater New York, concerning the transfer of work now being done in the Government Printing Office to private printing plants; to the Committee on Printing.

3961. Also, petition of the International Allied Printing Trades Association, Washington, D. C., concerning the transfer of printing the patent specifications and Gazette by a substitute method for printing; to the Committee on Printing.

3962. Also, petition of the United Federal Workers of America, Marine Hospital Local No. 58, Stapleton, Staten Island, N. Y., concerning legislation providing a 5-day week in the Federal service and an independent board of appeals for Federal workers; to the Committee on the Civil Service.

3963. By Mr. KRAMER: Resolution of the seventeenth district, the American Legion, Department of California, relative to enforcement of the navigation and immigration laws, etc.; to the Committee on Immigration and Naturalization.

3964. Also, resolution of the seventeenth district, American Legion, Department of California, relative to sponsoring the Universal Service Act, etc.; to the Committee on Military Affairs.

3965. By Mr. MERRITT: Resolution of the United Federal Workers of America, Local No. 58, congratulating the Honorable JOHN W. MCCORMACK and the Honorable M. M. LOGAN and commending House bill 8431 and Senate bill 3050, and petitions speedy enactment into law; to the Committee on the Civil Service.

3966. Also, resolution of the United Federal Workers of America, Local No. 58, commending the Honorable H. S. BIGELOW and the Honorable M. M. LOGAN for their interest in Government employees through House bill 8428 and Senate bill 3051; to the Committee on the Civil Service.

3967. Also, resolution of the Brooklyn Post, No. 2, of the Jewish War Veterans, respectfully petitioning the President of the United States to intercede with the Rumanian Government to cease its viciously unjust discrimination against its racial and religious minorities; to the Committee on Foreign Affairs.

3968. By Mr. O'BRIEN of Illinois: Petition of the Employees' Association of the Corn Products Refining Co., of Argo, Ill., relating to import duty on tapioca starch and its foreign brother, sago; to the Committee on Ways and Means.

3969. By Mrs. ROGERS of Massachusetts: Petition of the General Court of Massachusetts, memoralizing Congress for the enactment of Federal legislation regulating certain minimum wages and maximum hours of labor; to the Committee on Labor.

3970. By Mr. THURSTON: Petition of citizens of Lamoni, Iowa, protesting against the enactment of legislation providing for the licensing of firearms and fingerprinting of owners thereof; to the Committee on the Judiciary.

3971. By Mr. TINKHAM: Resolutions memorializing Congress for the enactment of Federal legislation regulating certain minimum wages and maximum hours of labor; to the Committee on Labor.

3972. By the SPEAKER: Petition of the Steel Workers Independent Union, Inc., East Chicago, Ind., with reference to equitable distribution of steel orders resulting from proposed increase in national defense and other public works; to the Committee on Military Affairs.

3973. Also, petition of the United Workers' legislative committee, Philadelphia, Pa., petitioning consideration of their resolution with reference to House bill 8426 and Senate bill 3051; to the Committee on the Civil Service.

3974. Also, petition of the United Federal Workers of America, Philadelphia, Pa., petitioning consideration of their resolution, dated December 9, 1937, with reference to House bill 8431; to the Committee on the Civil Service.

3975. Also, petition of the National Rivers and Harbors Congress, Washington, D. C., petitioning consideration of their resolutions dated January 20–21, 1938; to the Committee on Rivers and Harbors.

SENATE

FRIDAY, FEBRUARY 4, 1938

(Legislative day of Wednesday, January 5, 1938)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Thursday, February 3, 1938, was dispensed with, and the Journal was approved.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Calloway, one of its reading clerks, announced that the House had passed a bill (H. R. 9181) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1939, and for other purposes, in which it requested the concurrence of the Senate.

SENATOR FROM OREGON

Mr. McNARY presented the credentials of ALFRED EVAN REAMES, appointed Senator from the State of Oregon, which was read and ordered to be placed on file, as follows:

STATE OF OREGON,
EXECUTIVE DEPARTMENT,
Salem, February 1, 1938.

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that pursuant to the power vested in me by the Constitution of the United States and the laws of the State of Oregon, I, Charles H. Martin, the Governor of said State, do hereby appoint ALFRED EVAN REAMES a Senator from said State to represent said State in the Senate of the United States until the vacancy therein, caused by the resignation of Frederick Steiwer is filled by election, as provided by law.

Witness: His Excellency our Governor, Charles H. Martin, and our seal hereto affixed at Salem, Oreg., this 1st day of February A. D. 1938.

By the Governor:

[SEAL]

CHARLES H. MARTIN,
Governor.

EARL SNELL,
Secretary of State.

CALL OF THE ROLL AND INTERVENING BUSINESS

Mr. LEWIS. Mr. President, I suggest——

Mr. WAGNER. Mr. President——

Mr. LEWIS. I yield to the Senator from New York for a moment.

Mr. WAGNER. Mr. President, I ask unanimous consent to introduce a bill and ask that an explanatory statement of the bill may be printed in the RECORD as part of my remarks.

The VICE PRESIDENT. Is there objection? The Chair hears none.

(The bill introduced by Mr. WAGNER, together with the explanatory statement, appear under the appropriate heading elsewhere in today's RECORD.)

Mr. LEWIS. Mr. President, I ask unanimous consent to tender a bill, and, following that, I suggest the absence of a quorum.

The VICE PRESIDENT. Is there objection? The Chair hears none.

(The bill introduced by Mr. LEWIS appears under the appropriate heading elsewhere in today's RECORD.)

The VICE PRESIDENT. The Senator from Illinois having suggested the absence of a quorum, the clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Connally	King	Pittman
Andrews	Copeland	La Follette	Pope
Ashurst	Davis	Lee	Radcliffe
Austin	Donahey	Lewis	Reynolds
Bailey	Duffy	Lodge	Russell
Bankhead	Ellender	Logan	Schwartz
Barkley	Frazier	Lonergan	Schwellenbach
Berry	George	Lundeen	Sheppard
Bilbo	Gerry	McAdoo	Smathers
Bone	Gibson	McGill	Smith
Borah	Gillette	McKellar	Thomas, Okla.
Bridges	Glass	McNary	Thomas, Utah
Brown, Mich.	Guffey	Maloney	Townsend
Brown, N. H.	Hale	Miller	Truman
Bulkley	Harrison	Milton	Tydings
Bulow	Hatch	Minton	Vandenberg
Burke	Hayden	Murray	Van Nuys
Byrd	Herring	Neely	Wagner
Byrnes	Hill	Norris	Walsh
Capper	Holt	Nye	Wheeler
Caraway	Hughes	O'Mahoney	
Chavez	Johnson, Calif.	Overton	
Clark	Johnson, Colo.	Pepper	

Mr. LEWIS. I announce that the Senator from Rhode Island [Mr. GREEN] is absent because of illness.

The Senator from Illinois [Mr. DIETERICH] and the Senator from South Dakota [Mr. HITCHCOCK] are detained on important public business.

The Senator from Nevada [Mr. MCCARRAN] is detained in his State on official business.

Mr. AUSTIN. I announce that the Senator from Minnesota [Mr. SHIPSTEAD] is necessarily absent from the Senate.

The VICE PRESIDENT. Eighty-nine Senators have answered to their names. A quorum is present.

TRANSACTION OF ROUTINE BUSINESS

The VICE PRESIDENT. When the Senate took a recess yesterday, the Senator from Utah had the floor, and gave notice that he would like to continue his address to the Senate this morning.

Mr. KING. Yes.

Mr. AUSTIN. Mr. President, will the Senator yield to me?

Mr. KING. I yield, if I may do so without thereby losing the floor.

Mr. AUSTIN. I ask unanimous consent that the Senator from Utah may yield without losing any of his rights.

Mr. CONNALLY. Mr. President, reserving the right to object——

The VICE PRESIDENT. Just a moment. Two bills have been introduced and unanimous consent has been asked that the Senator from Utah yield without losing the floor, and no Senator is objecting.

Let the Chair remind the Senate once more that, under the regular, ordinary procedure of the Senate, when there is no invoking of the rule as to debate, the Senator having the floor yields, and there is nothing said about it. But, as a matter of fact, the RECORD of yesterday shows that the Senator from Utah [Mr. KING] yielded yesterday for a recess without getting unanimous consent of the Senate to proceed without prejudice today. There was a sort of an understanding, but the Presiding Officer at the time did not put a unanimous-consent request to the Senate. It was a gentleman's agreement, without the rules being invoked. May the Chair ask unanimous consent if the Senator from Utah may proceed this morning without regard to the recess of the Senate or the business already transacted in the Senate? Is there objection? The Chair hears none.

Now, will the Senator from Utah permit the Chair, before he recognizes him, to recognize other Senators to introduce bills, resolutions, and other routine matters?

Mr. KING. I yield very gladly.

The VICE PRESIDENT. The Senator from Vermont.

Mr. AUSTIN. I introduce a bill which I ask to have referred to the Committee on Military Affairs.

(The bill introduced by Mr. AUSTIN appears under the appropriate heading elsewhere in today's RECORD.)

REPORT OF THE CHESAPEAKE & POTOMAC TELEPHONE CO.

The VICE PRESIDENT laid before the Senate letters from the president of the Chesapeake & Potomac Telephone Co., transmitting, pursuant to law, a statement of receipts and expenditures, together with a comparative general balance sheet of the company for the full year 1937, which, with the accompanying papers, were referred to the Committee on the District of Columbia.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate a paper in the nature of a petition from Zachary Glieshuk, of New York City, N. Y., praying for the prompt enactment of the bill (H. R. 1507) to assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching, which was ordered to lie on the table.

Mr. COPELAND presented a resolution adopted by a meeting of manufacturers of Waterford, N. Y., favoring the repeal of the undistributed-profits and capital-gains taxes, and the adoption of other measures to aid in overcoming the business recession, which was referred to the Committee on Finance.

He also presented a resolution adopted by the annual meeting of the Lewis County Holstein-Friesan Club, at Lowville, N. Y., protesting against the enactment of wage and hour legislation, which was ordered to lie on the table.

He also presented a memorial of sundry citizens, being members of the Typographical Union of New York, N. Y., remonstrating against the ratification of the proposed copyright treaty, which was ordered to lie on the table.

Mr. LEE presented resolutions recently adopted by the State convention of the National Farmers' Educational and Cooperative Union of America, at Oklahoma City, Okla., which were referred to the Committee on Commerce and ordered to be printed in the RECORD, as follows:

REPORT OF RESOLUTIONS AND LEGISLATIVE COMMITTEE

We, your committee on resolutions and legislation, wish to present the following:

NATIONAL RESOLUTIONS

NO. 1

We recommend the early construction of lakes, reservoirs, and dams over a wide territory from the western part of North Dakota, south, between western Texas and Oklahoma, to the Rio Grande River in Texas, and all effective measures of soil conservation to be favored. Carried.

NO. 2

We recommend an immediate amendment to the Frazier-Lemke bill to refinance farm mortgages, and the bill applying to town and city mortgages, to the effect that said bills apply first to homesteads and in those States only which have laws against mortgaging homesteads except for purchase price. Carried.

NO. 3

We recommend that our National Representatives center their efforts for the enactment of legislation for water and soil conservation, the cost-of-production bill, and Frazier-Lemke farm refinancing bill. Carried.

NO. 4

Resolved, That there should be a standard of value based on hours of productive labor as a unit of valuation, to be enacted by an act of Congress to the end that we may have a standard of value by which to determine the value of the production of labor, and that the Government of the United States shall be the sole banker for its citizens.

NO. 5

We recommend that the Farmers' Union go on record favoring adoption of the rural electrification of rural homes.

NO. 6

Resolved, That we favor the enactment of an adequate old-age pension law to be administered and paid by the Federal Government.

Mr. LEE also presented a resolution adopted by the Chamber of Commerce, of Henryetta, Okla., which was referred to the Committee on Finance and ordered to be printed in the RECORD, as follows:

Whereas the various glass manufacturing industries of the United States employ many thousands of workers; and

Whereas the manufacturing of glass in Okmulgee County, and in the State of Oklahoma, constitutes one of the important industrial pursuits of said Okmulgee County, and of the State of Oklahoma; and

Whereas there is now being imported into the United States from foreign countries, notably from Czechoslovakia, large quantities of manufactured glass which is being sold at prices not greater and in many instances less than the cost of production in our own country; and

Whereas this condition is brought about by reason of low-import duties applicable to the importation of such manufactured commodities into the United States; and

Whereas because of such importations, our own factories are not able to operate their factories regularly and steadily, thus causing much unemployment and adding materially to the already deplorable condition of mass unemployment: Therefore be it

Resolved by the Chamber of Commerce of Henryetta, Okla., That the authorities at Washington be most earnestly urged to revise the schedule of rates applicable to manufactured glass commodities imported from foreign countries to a figure that will equalize the selling price of home-manufactured glass and imported glass upon the markets within the United States.

REPORT OF COMMITTEE ON IRRIGATION AND RECLAMATION

Mr. BANKHEAD, from the Committee on Irrigation and Reclamation, to which was referred the joint resolution (H. J. Res. 150) to permit a compact or agreement between the States of Idaho and Wyoming respecting the disposition and apportionment of the waters of the Snake River and its tributaries, and for other purposes, reported it with an amendment and submitted a report (No. 1319) thereon.

BILLS AND JOINT RESOLUTIONS INTRODUCED

Bills and joint resolutions were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. AUSTIN:

A bill (S. 3386) to authorize the Secretary of War to lend War Department equipment to the University of Vermont and State Agricultural College of Burlington, Vt., for use at the Fifteenth Annual New England Music Festival to be held at Burlington, Vt., May 20 and 21, 1938; to the Committee on Military Affairs.

By Mr. BROWN of Michigan:

A bill (S. 3387) for the relief of Hubert J. Cuncannan; to the Committee on Claims.

A bill (S. 3388) to authorize the erection of a United States Veterans' Administration hospital in the Upper Peninsula of Michigan; to the Committee on Finance.

A bill (S. 3389) for the relief of Albert Richard Jeske; to the Committee on Immigration.

(Mr. WAGNER introduced Senate bill 3390, which was referred to the Committee on Education and Labor, and appears under a separate heading.)

By Mr. BONE:

A bill (S. 3391) to amend section 8c of the Agricultural Adjustment Act, as amended; to the Committee on Agriculture and Forestry.

By Mr. ELLENDER:

A bill (S. 3392) providing for an examination and complete survey of Bayou DuLarge, La.; to the Committee on Commerce.

By Mr. SCHWARTZ:

A bill (S. 3393) to amend section 1, subdivision (a), clause (1), of the act entitled "An act to supplement the naturalization laws, and for other purposes," approved March 2, 1929 (45 Stat. L. 1512), as amended; to the Committee on Immigration.

By Mr. COPELAND:

A bill (S. 3394) authorizing the President to present a gold medal to Thomas P. Loftain; to the Committee on Naval Affairs.

By Mr. GLASS:

A bill (S. 3395) to authorize the Secretary of the Treasury to cancel obligations of the Reconstruction Finance Corporation incurred in supplying funds for relief at the authorization or direction of Congress, and for other purposes; to the Committee on Banking and Currency.

By Mr. KING:

A bill (S. 3396) to repeal the Miller-Tydings Resale Price Maintenance Act; to the Committee on the Judiciary.

By Mr. LEWIS:

A joint resolution (S. J. Res. 250) authorizing the issuance of a series of special postage stamps in honor of the Seventh World's Poultry Congress and Exposition; to the Committee on Post Offices and Post Roads.

By Mr. WAGNER:

A joint resolution (S. J. Res. 251) authorizing the erection of a memorial to the late Guglielmo Marconi; to the Committee on the Library.

By Mr. BROWN of Michigan:

A joint resolution (S. J. Res. 252) to authorize compacts or agreements between the States bordering on the Great Lakes with respect to fishing in the waters of the Great Lakes, and for other purposes; to the Committee on Commerce.

By Mr. HARRISON:

A joint resolution (S. J. Res. 253) extending for 2 years the time within which American claimants may make application for payment, under the Settlement of War Claims Act of 1928, of awards of the Mixed Claims Commission and the Tripartite Claims Commission, and extending until March 10, 1940, the time within which Hungarian claimants may make application for payment, under the Settlement of War Claims Act of 1928, of awards of the War Claims Arbiter; to the Committee on Finance.

COMPLIANCE WITH NATIONAL LABOR RELATIONS ACT

Mr. WAGNER. Mr. President, I ask unanimous consent to introduce a bill for appropriate reference, and also that an explanatory statement of the bill may be printed in the RECORD.

The VICE PRESIDENT. Without objection, the bill will be received and appropriately referred, and the statement will be printed in the RECORD, as requested by the Senator from New York.

The bill (S. 3390) to provide for guaranties of collective bargaining in contracts entered into, and in the grant or loan of funds by, the United States or any agency thereof, and for other purposes, was read twice by its title and referred to the Committee on Education and Labor.

The statement presented by Mr. WAGNER is as follows:

The National Labor Relations Act embodies the public policy of the United States with respect to collective bargaining and is now established upon a firm constitutional basis.

No sound reason appears why those receiving the benefits of Government contracts, loans, or grants should be permitted at the same time to defy the letter or spirit of this fundamental and valid statute. It is contrary to all sound principles for the Government itself to give effective aid to those violating the law of the land.

This question has been of pressing concern ever since the Federal Government has sought by law to insure the right of employees to organize and bargain collectively through representatives of their own choosing. It was a source of serious difficulty in the administration of section 7 (a) by the National Labor Board during the period when I served as Chairman, and it has arisen time and again in the administration of subsequent legislation along the same lines. The matter came to a head when the Comptroller General recently ruled that flagrant violations of the terms of the National Labor Relations Act and continued refusals to comply with decisions of the National Labor Relations Board, whether or not affirmed by the courts, were no grounds for denying Government contracts to the law violators. This result requires remedy by legislation.

The present bill, in very simple terms, supplies that remedy. In substance it requires that all persons obtaining the benefits of Government contracts or Government loans or grants shall comply with the National Labor Relations Act and with decisions, certifications, and orders of the National Labor Relations Board.

The jurisdiction of the Board under the National Labor Relations Act is limited, generally speaking, to enterprises that can be brought within the Federal power under the commerce clause of the Constitution. There is no question, however, that the Federal Government, apart from the limitations of the commerce clause, may legislate with respect to the conditions under which it will enter into contracts for equipment or supplies, or make grants or loans of public funds.

The present bill, therefore, applies to all persons obtaining such benefits, whether or not they are otherwise subject to the terms of the National Labor Relations Act. The jurisdiction conferred upon the Board under this bill is thus apart from and in addition to any and all jurisdiction conferred under the National Labor Relations Act itself. The bill does not, however, apply to purchases made on the open market, or to the first processing of agricultural products, or to persons covered by the Railway Labor Act.

This bill would accomplish two important results:

(1) It would bring about a more general compliance with the provisions of the National Labor Relations Act and eliminate the instances where large corporate interests have evaded and violated the law while obtaining the benefits of Federal grants, loans, or contracts.

(2) It would insure that employees of employers benefiting by such Government contracts, loans, or grants will have the same protection in their collective-bargaining rights as employees in private industry covered by the interstate-commerce clause. The public interest will be substantially advanced by eliminating wasteful industrial strife on Government-financed projects, through application of the principles of fair dealing between employers and employees incorporated in the National Labor Relations Act.

FEDERAL HIGWAY SAFETY AUTHORITY

Mr. REYNOLDS. Mr. President, the joint resolution I am about to introduce proposes to request the President to create a Federal Highway Safety Authority for the purpose of coordinating existing efforts to bring about safer use of the Nation's highways. It does not call for any new Federal expenditures or any new departments. In other words, it would simply shape into a coordinated plan all the traffic safety programs now underway.

The need for this is evident to anyone who reads the daily newspapers. Last year, according to figures of the American Automobile Association, 39,243 men, women, and children were killed on our streets and highways. Nearly a million and a half were injured. Yet in the face of this tragic condition, the Senate has been devoting day after day to the discussion of a minor problem, as compared with the traffic death toll.

Recently the Bureau of Public Roads has sent to the Congress five reports in connection with traffic safety conditions. These reports will undoubtedly prove helpful in getting at the cause of traffic accidents. There are now pending in both the House and Senate measures in connection with future Federal-aid highway funds. In these bills provision is made to deny Federal road funds to States without uniform motor laws. It is questionable whether this is a sound way to get these laws, but I mention this point as evidence of the interest in the traffic safety problem already being shown in Congress.

While this problem has been growing more acute from year to year, it is only recently that the Congress has shown real interest. One reason probably is that the control of vehicles and drivers on the streets and highways is a State and local problem. However, the Federal Government can properly assist the State through coordination of sound traffic safety programs and passing from one State to another the benefits of proven safety legislation.

There are in the country today numerous organizations which have been devoting years to improving traffic conditions and reducing the traffic death toll. Under the joint resolution I propose, the President would create an authority composed of representatives of these organizations directly concerned with traffic safety to cooperate with and work with Federal agencies likewise interested. Here would be the cooperation of the Federal Government and organizations working in the public interest.

One of the organizations wholeheartedly supporting the creation of a Federal Highway Safety Authority is the American Automobile Association. Other national groups may be expected to also get behind it.

Certainly my joint resolution suggests a sound way to get at the proper procedure in reducing the toll of traffic deaths and injuries and I earnestly hope that it will be given early consideration.

I ask unanimous consent to introduce the joint resolution for appropriate reference and to have it printed in the RECORD.

There being no objection, the joint resolution (S. J. Res. 254) to create a Federal Highway Safety Authority, composed of representatives of the Federal Government to be designated by the President and representatives of national organizations to be designated in the same manner, was read twice by its title, referred to the Committee on Post Offices and Post Roads, and ordered to be printed in the RECORD, as follows:

Resolved, etc., That the President be requested to establish a Federal Highway Safety Authority to be composed of such representatives of the Federal Government as the President may designate, and representatives of national organizations actively in the field of highway safety, also to be designated by the President in such number as the President may deem advisable.

SEC. 2. It will be the duty of the Authority to coordinate existing Federal traffic safety activities, including the gathering of accident statistics and information, encourage the enactment by the States of uniform motor laws and regulations and effective administration, and to cooperate with such State safety authorities as may be set up.

HOUSE BILL REFERRED

The bill (H. R. 9181) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1939, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

FAIR TRADE LAWS—ADDRESS BY SENATOR TYDINGS

[Mr. MILLER asked and obtained leave to have printed in the RECORD an address delivered by Senator TYDINGS on the 3d instant before a meeting of independent producers and retailers at the Lord Baltimore Hotel in Baltimore, Md., which appears in the Appendix.]

ADDRESS BY SENATOR GUFFEY BEFORE THE UNITED MINE WORKERS

[Mr. MINTON asked and obtained leave to have printed in the RECORD an address delivered on the 31st ultimo by Senator GUFFEY before the Thirty-fifth Constitutional Convention of the United Mine Workers of America, which appears in the Appendix.]

RESOLUTIONS OF CONFERENCE OF REPRESENTATIVES OF SMALLER BUSINESSES

[Mr. BAILEY asked and obtained leave to have printed in the RECORD several sets of resolutions adopted by committees of the conference of representatives of smaller businesses meeting in Washington.]

TRUTH AS TO SO-CALLED WILSON-ROOSEVELT CONTROVERSY—LETTER BY JOSEPH P. TUMULTY

[Mr. BAILEY asked and obtained leave to have printed in the RECORD a letter dated Washington, D. C., January 17, 1938, addressed to the editor of the New York Times by Mr. Joseph P. Tumulty, replying to a statement by Emil Ludwig that Theodore Roosevelt was kept from the battlefields of France by President Wilson, which appears in the Appendix.]

RELATIONSHIP BETWEEN LIQUOR AND CRIME

[Mr. SHEPPARD asked and obtained leave to have printed in the RECORD certain figures taken from the recent annual report of the Attorney General relating to liquor and crime, which appears in the Appendix.]

CHANGING SENTIMENT TOWARD REPEAL OF EIGHTEENTH AMENDMENT

[Mr. SHEPPARD asked and obtained leave to have printed in the RECORD editorials suggesting reasons for changing sentiment toward repeal of the eighteenth amendment, which appear in the Appendix.]

THE GRAND COULEE DAM—ARTICLE BY DON T. MILLER

[Mr. SCHWELLENBACH asked and obtained leave to have printed in the RECORD an article relating to the Grand Coulee Dam, written by Don T. Miller and published in the Okanogan Independent, of Okanogan, Wash., on January 25, 1938, which appears in the Appendix.]

PREVENTION OF AND PUNISHMENT FOR LYNCHING

The Senate resumed the consideration of the bill (H. R. 1507) to assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching.

Mr. KING. I ask unanimous consent, without losing my rights and prerogatives under the rule, to yield to the Senator from Idaho [Mr. BORAH], and that I may resume my speech at the conclusion of his remarks.

The VICE PRESIDENT. Is there objection? The Chair hears none. The Senator from Idaho.

Mr. BORAH. Mr. President, the able and thorough and, no doubt, sincere presentation of this matter by the Senator from New York [Mr. WAGNER] on yesterday gives us, particularly from a constitutional viewpoint, the view of those who are advocating the passage of this measure. Perhaps all has been said that can be said in support of its constitutionality.

With reference to some views expressed, probably I would not differ with the distinguished Senator, but as to the constitutional questions I differ with him, and I desire now to present that difference. While I realize that it is a late hour in the debate to expect any considerable attention to the discussion, I feel that this particular feature of the matter ought to have our further consideration.

I shall direct my attention particularly to sections 3 and 5. I begin with section 5, and ask that the clerk may read the first subdivision of that section.

The VICE PRESIDENT. Without objection, the clerk will read the first subdivision of section 5 of the bill.

The legislative clerk read as follows:

SEC. 5. (1) Every governmental subdivision of a State to which the State shall have delegated functions of police shall be responsible for any lynching occurring within its territorial jurisdiction. Every such governmental subdivision shall also be responsible for any lynching occurring outside of its territorial jurisdiction, whether within or without the same State, which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction. Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each person injured, or to his or her next of kin if such injury results in death, for a sum not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided, however,* That the governmental subdivision may prove by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and citizens thereof when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further,* That the satisfaction of judgment against one governmental subdivision responsible for a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching.

Mr. BORAH. Mr. President, we thus have presented the specific question whether the Federal Government can give rise to a cause of action against a State government or a subdivision of a State government. It is a simple, plain proposition: Can one sovereignty interfere with the machinery of another sovereignty?

Upon yesterday the able Senator from New York [Mr. WAGNER], in the closing part of his remarks, advanced the theory that the suit referred to in the bill is not a suit against the State; it is a suit against the county. A reading of the section itself, however, at once answers the contention, because the section refers to the county as a subdivision of the State—a political subdivision of the State to which it has transferred certain political powers and functions. If the Senator should follow this contention to its logical conclusion then he would be compelled to admit that a sheriff is not an officer of the State but of the county and he would be foreclosed in his contention as to section 3 that the sheriff is an officer of the State by which he claims the sheriff's action is State action. But aside from the language of the section itself, the Supreme Court of the United States many times has decided that a county is a part of the State, and that a suit against a county is a suit against the State. It also has held that a municipality, a city—in the particular instance to which I shall refer, the city of Baltimore, created under the laws of the State of Maryland—is a part of the State, and comes within the rule which I am about to invoke.

Thus we have in the beginning the specific question whether the Federal Government can give rise to a cause of action against another sovereignty, the State; whether one sovereignty can proceed to impose upon the other sovereignty anything in the nature of a suit, or a burden, or an embarrassment of any kind whatever.

That question has been passed upon many times; and I do not know of any instance in which the Supreme Court has ever permitted the Federal Government to bring suit against a subdivision of the State, or the State itself, or to take any action which would tend to curtail or to embarrass a State or any of the subdivisions of the State. The question was first decided, as we all know, in the great case in which the opinion was written by Chief Justice Marshall, in which the taxing power was involved. The principle of the integrity of the two sovereignties was here declared.

There is no exception in the Constitution itself as to the power of the Federal Government to tax the instrumentalities of the State. The Constitution gives the broad power to lay and collect taxes; and it was contended early in our history that that power was sufficiently broad to enable the Federal Government to tax the officials or the instrumentalities of the State. It was said by the Supreme Court, however, that while the exception did not appear in the express language of the Constitution, it arose out of the very nature of the Government which we have created by the Constitution—to wit, two sovereignties—and that if one sovereignty could in any respect embarrass the other sovereignty, it would tend to destroy the entire structure set up by the Constitution. Therefore, it was held, in the very beginning of the Government, that neither sovereignty could in anywise interfere with or embarrass or curtail the activity of the other sovereignty.

There has never been any dissenting opinion upon that question in the history of the Supreme Court. The only dissent which has ever arisen with reference to that question was as to whether or not either of the sovereignties could consent to being sued, or consent to being taxed, or consent to interference. Upon that question there has been a division of opinion; the majority of the Court, however, always holding that even consent would not give the power which was invoked in the several instances. But on the main question as to whether either sovereignty could in anywise inter-

fere with or control or embarrass the other, there never has been, to my knowledge, any division of the Court or any dissent upon the part of any Justice.

That has been true with reference to all forms and all methods of attack upon counties and upon the State; not with reference merely to the taxing power but whenever the Federal Government has sought in anyway to deal with the instrumentalities of the State, or the State itself, or subdivisions of the State, it has been inhibited from so doing by the unanimous opinion of the Supreme Court of the United States. As I listened closely yesterday to the Senator from New York, I was waiting for the time when he would cite us to any digression from that rule, to any opinion of the Supreme Court which would give any justification for the first subdivision of section 5 of this bill; and, of course, the Senator—candid and fair, as always—did not undertake to do so.

Mr. MINTON. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Idaho yield to the Senator from Indiana?

Mr. BORAH. I yield.

Mr. MINTON. The authority which the Senator has cited, of course, arose back in the early days of this Government, and long before the existence of the fourteenth amendment, which sought to give the Federal Government some power to protect the rights of citizens against State action.

Mr. BORAH. Mr. President, in regard to that matter, I have to say that the line of decisions is unbroken, both before the fourteenth amendment and since the fourteenth amendment. There is no change whatever in the proposition that no constitutional provision has ever been so construed by the Supreme Court as to permit one sovereignty to interfere with another. That rule did not rest in the express terms of the Constitution itself; it rested in the very nature of the Government, to wit, the creation of two sovereignties, each in its sphere independent of the other, neither being able to impose upon or interfere with the other; and that rule was not changed by the adoption of the fourteenth amendment, as has been many times said by the Supreme Court. The fourteenth amendment was the severest blow ever struck at local self-government in this country, but it did not go so far as to destroy the principle that one sovereignty could not interfere with the machinery, the set-up, of another sovereignty.

Mr. President, I do not desire to go at great length into this matter, but I must refer to some late decisions of the Supreme Court.

The Constitution of the United States gives Congress power to establish a uniform system of bankruptcy. That grant is as broad as some Senators would make the fourteenth amendment, or the fifth section of the fourteenth amendment. There is no exception. The Constitution simply gives Congress power to establish a uniform system of bankruptcy throughout the United States. Recently a law was passed making amendments to the Bankruptcy Act in which it was extended to cover the subdivisions of the States, the counties, and provision was made that they might take advantage of the Bankruptcy Act. The Supreme Court, coming back to the old doctrine which was announced in the beginning, said that the Congress did not have power, even under the grant of power to establish a uniform bankruptcy system, to interfere with in any way or to provide any manner by which the counties of the State could be interfered with, or in any way to shape the course of conduct of the counties of the States.

This is the case of Ashton against Cameron, reported in Two Hundred and Ninety-eighth United States Reports. It is important, because it goes back and connects up the theory I have announced, citing the tax cases and other cases, and invoking the same rule.

I read from the syllabus:

A district organized to furnish water for irrigation and domestic uses, which became a county water improvement district, all pursuant to the Constitution and Statutes of Texas, with power to sue and be sued, issue bonds, and levy and collect taxes—*held* a political subdivision of the State.

* * * * * * *

In determining the existence of a constitutional power, inquiry is not limited to the results of its attempted exercise; it is of the first importance to consider what might be the results of its future exercise.

* * * * * * *

If their obligations may be subjected to interference—

That is, if the obligations of a subdivision of the State may be subjected to interference—

If their obligations may be subjected to the interference here attempted, States and their political subdivisions are no longer free to manage their own affairs; the will of Congress prevails over them.

* * * * * * *

Neither consent nor submission by the States can enlarge the powers of Congress. The sovereignty essential to the proper functioning of a State under the Constitution cannot be surrendered, nor can it be taken away by any form of legislation.

I think it worth while to read from the body of the opinion one or two extracts.

Its fiscal affairs—

That is, the fiscal affairs of the county, because this was deemed by the Court to be a county—

Its fiscal affairs are those of the State, not subject to control or interference by the National Government.

Quoting from an earlier case, but one which arose since the adoption of the fourteenth amendment, the Court said:

We have already had occasion to remark at this term, that "the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence," and that "without the States in union, there could be no such political body as the United States."

Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States and the maintenance of their governments are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution in all its provisions looks to an indestructible union, composed of indestructible States.

Bear in mind that in this case there was before the Court a law permitting a State or one of its subdivisions to take advantage of the Bankruptcy Act. Yet, in the view of the Supreme Court, it sought to embarrass or contract the financial affairs of the State, and therefore was void.

Again, referring to a later case, in Two Hundred and Eighty-third United States Reports, the Court said:

This principle is implied from the independence of the National and State Governments within their respective spheres and from the provisions of the Constitution which looks to the maintenance of our dual system of government.

This principle, I repeat, does not arise out of any express provision of the Constitution adopted before, at the time of, or since the adoption of the fourteenth amendment. It arises out of the existence of the dual system of government, which could not be maintained if one sovereignty could interfere with the affairs of another sovereignty.

The Court also quoted the following from a case in Seventeenth Wallace:

A municipal corporation like the city of Baltimore is a representative not only of the State but is a portion of its governmental power. It is one of its creatures, as is every county, made for specific purposes to exercise within limited spheres the powers of the State. The State may withdraw these local powers of government at pleasure and may through its legislature or other appointed channels govern the local territory as it governs the State at large. It may enlarge or contract its power or destroy its existence as a portion of the State in the exercise of a limited portion of the powers of the State. Its revenues, like those of the State, are not subject to taxation.

The opinion further states:

If Federal bankruptcy laws can be extended to respondent, why not to the State? * * * If obligations of States, or their political subdivisions, may be subjected to the interference here attempted, they are no longer free to manage their own affairs; the will of Congress prevails over them. * * * The sovereignty of the State essential to its proper functioning under the Federal Constitution cannot be surrendered. It cannot be taken away by any form of legislation.

It may be said that there was a dissenting opinion in this case and therefore the majority opinion was somewhat weakened. But the dissenting opinion was to the effect that the

State might consent to this interference and that it had consented. The division was over the question of whether the consent could be given, a majority holding that consent could not be given, a minority holding it might be given and had been given. So far, however, as this measure is concerned, it may be said that the opinion was unanimous because no question of consent is involved in the measure before us.

Mr. President, undoubtedly a State can fix such responsibility upon its counties as it sees fit. It can withdraw any power from the counties it sees fit to withdraw. It can provide that a county shall not be responsible except for certain classes of obligations. A State could enact a law providing that its counties should not be liable for damages claimed by a private citizen. It would undoubtedly have the power to do so. So, when it is said that a county shall be liable to a claim upon the part of the Federal Government, that is an attempt directly to interfere with the power of the State over its counties, and it comes clearly within the rule.

In conclusion, the Court said in the case from which I have been quoting:

> The difficulties arising out of our dual form of government and the principles of differing opinions concerning the relative rights of the States and the National Government are many, but for a very long time this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the States or their political subdivisions, and the same basic reasoning which leads to that conclusion requires like limitations upon the power which springs from the bankruptcy clause.

Mr. President, this is a late opinion, and seems to me conclusive in this matter.

I call attention, however, to a case in Two Hundred and Ninety-sixth United States Reports. This well illustrates the extent to which the Court goes in protecting a State from the interference of the Federal Government. The Court said:

> The Home Owners' Loan Act, to the extent that it permits the conversion of State associations into Federal ones in contravention of the laws of the place of the creation, is an unconstitutional encroachment upon the reserved powers of the States.

In the body of the opinion we find this language:

> Wisconsin, planning these agencies in furtherance of the common good and purposing to preserve them that the good may not be lost, is now informed by the Congress, speaking through a statute, that the purpose and the plan shall be thwarted and destroyed. By the law of the State, associations such as these may be dissolved in ways and for causes carefully defined, in which event the assets shall be converted into money and applied, so far as adequate, to the payment of the creditors. By the challenged act of Congress, the same associations are dissolved in other ways and for other causes, and from being creatures of the State become creatures of the Nation. In this there is an invasion of the sovereignty or quasi-sovereignty of Wisconsin and an impairment of its public policy, which the State is privileged to redress as a suitor in the courts so long as the tenth amendment preserves a field of autonomy against Federal encroachment.
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> * * * * * * *
>
> For anything here shown, the two classes of associations, Federal and State, may continue to dwell together in harmony and order. A concession of this possibility is indeed implicit in the statute, for conversion is not mandatory, but dependent upon the choice of a majority of the voters. The power of Congress in the premises, if there is any, being not exclusive, but at most concurrent, and the untrammeled coexistence of Federal and State associations being a conceded possibility, we are constrained to the holding that there has been an illegitimate encroachment by the Government of the Nation upon a domain of activity set apart by the Constitution as the province of the States (cf. *Linder v. United States* (268 U. S. 5, 17); *United States* v. *Dewitt* (9 Wall. 41, 45)). The destruction of associations established by a State is not an exercise of power reasonably necessary for the maintenance by the central government of other associations created by itself in furtherance of kindred ends.

In the case of *Metcalf & Eddy* v. *Mitchell* (269 U. S.) the Supreme Court said:

> But neither Government [State or Federal] may destroy the other nor curtail in any substantial manner the exercise of its powers.

In the case of *Barbier* v. *Connally* (113 U. S. 273) the Court said:

> But neither the fourteenth amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed "its police power"—

The section of the bill to which I have called attention refers to the fact that there is an effort to exercise the police powers which the State has granted to the counties—

> to prescribe regulations, to promote the health, peace, morals, education, and good order of the people, and to legislate so far as to increase the industries of the State, develop its resources, and add to its wealth and prosperity.

In a case entitled *In re Kemmler* (136 U. S.) where the fourteenth amendment was involved, the Court stated:

> But it [the fourteenth amendment] was not designed to interfere with the power of the State to protect the lives, liberties, and property of its citizens, and to promote their health, peace, morals, education, and good behavior.

The fourteenth amendment did not seek to intrude in any respect upon the police powers of the States. It did not subtract from the States in any manner whatsoever in dealing with the affairs of their own citizens, and the question of whether a person is entitled to recover damages against a county, or against any defendant, is a question of the exercise of the police powers of the State, as I shall show in a few moments by authorities cited.

In the case of *Duncan* v. *Missouri* (152 U. S. 377, 382) it is said:

> Due process of law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.

In *Maxwell* v. *Bugbee* (250 U. S. 525) the Court said:

> It was not the purpose of the fourteenth amendment to transfer from the States to the Federal Government the security and protection of those civil rights that inhere in State citizenship.

Where does the right arise with reference to a suit for damages? It arises in the operation of the police powers of the State. I venture to say that a State could properly pass a law providing that no county in the State should be liable for damages to a citizen by reason of the injury or death of another person. That would be in the exercise of the police powers of the State. It would be prescribing for a subdivision of the State its responsibility and its liabilities, as it undoubtedly has a right to do.

The Senator from New York relied upon the case found in the Two Hundred and Twenty-second United States Reports. That was the only authority cited by the Senator in support of his proposition, and I invite the Senate to consider that opinion for a moment. What were the facts in this opinion? The State of Illinois had passed a statute providing for liability upon the part of the county or the city for damages incurred by reason of mob action. The case went to the Supreme Court of Illinois. The Supreme Court of Illinois sustained the statute. Upon what ground? Upon the specific ground that the county was a subdivision of the State, and the State, being the parent of the county, could fix whatever responsibility it saw fit with regard to the county, and it could do that—why? Because, said the court, the creator of the county could fix whatever responsibility it saw fit, and could do so because of the fact that it was a proper exercise of the police powers of the State.

Mr. MINTON. Mr. President——

The PRESIDING OFFICER (Mr. BARKLEY in the chair). Does the Senator from Idaho yield to the Senator from Indiana?

Mr. BORAH. I yield.

Mr. MINTON. If the State could make a provision with respect to one of its counties, of course, it could make a similar provision with respect to itself, could it not?

Mr. BORAH. I did not hear the Senator's question.

Mr. MINTON. If the State could exempt one of its counties with respect to suits, as the Senator has been arguing, it could likewise exempt itself?

Mr. BORAH. I suppose it could.

Mr. MINTON. Let us suppose a case in which a State enacts a law which clearly violates the rights of some citizen. For instance, suppose a State enacts a law providing that whenever a Negro is charged with crime the authorities shall turn him over to the mob for lynching, and that the State shall not be liable, nor shall the county be liable for such

action. Does the Senator think the Federal Government would be impotent under the fourteenth amendment in bringing relief for such a person?

Mr. BORAH. It depends entirely upon the way in which the Federal Government sought to bring the relief to that person. If the State enacted a law which deprived the citizen of life, liberty, or property without due process of law, or which denied him the equal protection of the law—if the State as a State did either of these things, undoubtedly the Congress of the United States could enact legislation which would prevent such action, or it might be remedied through an appeal to the courts.

Mr. MINTON. Then suppose that the State did not obey the act of Congress, what would happen?

Mr. BORAH. The Senator is now talking about civil war. Suppose, under the old system of electing Senators, the legislature of a State had refused to elect a Senator, what would the Senator do about it?

Mr. MINTON. Let me get the Senator's question again. The Senator said: Suppose Senators were being elected by legislatures rather than by the people, and I were elected by the people, what would I do?

Mr. BORAH. No; I said: Suppose the Senator, in the days in which Senators were elected by the legislature, had been a candidate for the Senate, and the legislature had refused to act, what would he do about it?

Mr. MINTON. There is not anything that can be done about it.

Mr. BORAH. That kind of question, Mr. President, gets us nowhere.

Mr. MINTON. That is what I am pointing out to the Senator.

Mr. BORAH. It does not get us anywhere, and that is what I am pointing out to the Senator.

Mr. MINTON. The relief which the Senator refers to makes the Federal Government absolutely impotent to bring any relief.

Mr. BORAH. There are many things, Mr. President, in the system which we call our constitutional system which depend entirely upon the voluntary act of the Federal Government or the State government with reference to their relations one to another. When Mr. Barbour, the great lawyer from Virginia, said, in arguing the case, I think, of Cohen against Virginia, that there was no necessity for rebellion in this country; that if the States wanted to get out of the Union, all they had to do was to refuse to elect Congressmen, refuse to elect Senators; no one had any effective answer to it.

But they are not going to refuse. That depends something upon the patriotism and something upon the voluntary action to do that which is provided for in the Constitution, although no specific method or remedy is provided in the case of the violation of it.

What I am saying now is that the authority cited by the able Senator from New York was a State case, and turned entirely with respect to its constitutionality upon the question whether the State, in the exercise of its police power, could pass such a statute. I now ask, Where is the decision which holds that another sovereignty can step over into the State sovereignty and say, "You must exercise the police powers which you possess"?

We are dealing here, as the able Senator will recall, purely with State action. It did not involve the relationship of the two sovereignties at all. And that is all that the Supreme Court decided. Let me read what the Court said:

> The only question under this writ of error is as to the validity of a statute of the State of Illinois. * * *
> The validity of the law under the Illinois Constitution was thus affirmed, and that question is thereby foreclosed.

The Supreme Court of the United States did uphold the statute. Why? Because the Supreme Court of Illinois had upheld the statute, and did so in obedience to a rule long established that when a State statute has been found to be constitutional by a State court the Supreme Court of the United States will accept the decision of the State supreme court upon that question.

Further, the Supreme Court said:

> The law in question is a valid exercise of the police power of the State of Illinois.

Where is the police power of the Federal Government?

Mr. MINTON. Mr. President, will the Senator yield?

Mr. BORAH. I yield to the Senator.

Mr. MINTON. The Supreme Court has said that the Federal Government's police power exists in that field in which it may operate under the Federal Constitution.

Mr. BORAH. The Supreme Court has said that in the operation of or in the carrying out of a specific grant by the Constitution that the National Government may exercise that which is sometimes called the police power. It has never held in any instance that the Congress has any police power as such.

Mr. MINTON. If it exercises police power within its own field it must have police power.

Mr. BORAH. What particular case does the Senator have in mind?

Mr. MINTON. For instance, we have control over interstate commerce by direct grants.

Mr. BORAH. Yes.

Mr. MINTON. It is a crime to transport a stolen automobile in interstate commerce. If that is done the Federal Government can exercise its power with respect to such action, and that is an exercise of the police power in the realm of interstate commerce, and nothing else.

Mr. GEORGE. I may suggest that that is nothing but the exercise of an implied power to carry out the power expressly granted, to wit, the power to regulate interstate commerce, and the Court has always based its decision upon that ground.

Mr. MINTON. I ask the able Senator from Idaho if the police power is anything but an implied power. Is there anything said about police power in the Constitution with reference to the United States? That police power is an implied power and nothing else.

Mr. BORAH. And the police power was left entirely with the State. The police power is not an implied power. There was no effort to take over the police power by the National Government. Police power is exclusively a State power. The National Government may exercise the authority which is granted to it by the Constitution to regulate interstate commerce, but it has no power to do anything beyond regulation of interstate commerce. In other words, it cannot step aside from the regulation of interstate commerce to do something which may be thought wise or just to do.

Mr. MINTON. But if it is exercising Federal power in an admitted field it may exercise police power in that field.

Mr. BORAH. No; it may not exercise the police power in that field except the exercise of it which is necessary to regulate interstate commerce. The Federal Government has no general police power.

Mr. MINTON. Of course.

Mr. BORAH. Where is the constitutional provision which gives us a right to go into the States and exercise the police power by providing for damages against a county on behalf of the citizen?

Mr. MINTON. How does it regulate commerce, by way of illustration, for Congress to provide that you cannot ship lottery tickets in interstate commerce?

Mr. BORAH. That is a regulation of interstate commerce.

Mr. MINTON. Yes; purely within the field of the regulation of interstate commerce; and are you not exercising a police power within that field?

Mr. BORAH. Certainly not. You are simply regulating interstate commerce.

Mr. MINTON. But that is a regulation of the sovereign right of the Federal Government in the field in which it is the only sovereign.

Mr. BORAH. Exactly. We are discussing the power to regulate interstate commerce. But you cannot step outside the specific proposition of regulating interstate commerce to punish someone in the State for having bought a lottery

ticket. You can regulate commerce, but you cannot provide a suit for damages against the county or State for losses of the citizen who lost out in the scheme.

Mr. MINTON. Not at all; but when you are exercising any sovereign power in the admitted realm within which that sovereign may exercise such power, the exercise of that sovereign power necessarily implies a police power.

Mr. BORAH. I need not repeat what I have said.

The opinion to which I have referred says further:

> The State is the creator of the subordinate municipal governments. It vests in them the police powers essential to the preservation of law and order. The policy of imposing liability upon a civil subdivision of the Government exercising delegated police power is familiar to every student of the common law.

Outside this authority we have no authority for the provisions found in section 5 of the bill. The case to which I referred was a case which dealt exclusively with the powers of the State.

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. BORAH. I yield.

Mr. GEORGE. Has it not always been held that the sovereign itself may consent to a suit? It has always been the rule of law that the sovereign itself may consent to a suit, or consent to an action in tort; but that would be the case of the sovereign itself consenting to be sued, and would not be a case of the imposition of the will of another sovereign undertaking to render liable the particular sovereign made liable by the act.

Mr. BORAH. That rule is announced in the case which I read in Two Hundred and Ninety-eighth United States Reports. In that case the majority of the Court held that the county could not consent to outside interference by the Federal Government. A minority of the Court held that it could so consent, but the majority of the Court in all instances has held that a sovereign cannot consent to be interfered with, or to be sued, or that its power be curtailed by any outside source.

Mr. GEORGE. But it may itself consent.

Mr. BORAH. It may consent to be sued by its own people.

Mr. GEORGE. Exactly.

Mr. BORAH. But it cannot consent to be sued, or to be dealt with so as to interfere with its machinery and its methods of doing business, by an outside sovereign.

Section 5 presents to me, in many respects, the most serious feature of this bill, because it provides that the National Government may lodge a suit for damages against a State, or a subdivision of a State, on behalf of a citizen of that State. It undertakes to fix the responsibility and the liability of the State, or a subdivision of the State, toward its own citizens, which is an anomalous proposition to me. I cannot see where there is anything left in the way of sovereignty upon the part of the State if the Federal Government has the right and the power to go into the State and say to it, "You are responsible, thus and so, to your own citizens."

The State can fix the responsibility of the county, and no other authority can fix the responsibility; otherwise, as was said in the case which I read, the machinery of the State would be interfered with and clogged by the Federal Government.

I have searched rather industriously to find if any such proposal as this has ever been made outside the lynching bill, and I find no instance in which it was ever suggested that a county of a State should have its liability established, in questions of tort, by another sovereign. I assume that it all arose out of the State decisions, where the State was exercising its police power and fixing the responsibility of the county which it itself had created. I assume that is where it came from, but that leaves out of the question entirely the fact of one sovereignty dealing with another sovereignty. That situation is not involved in the State questions at all. The question which I present is whether one sovereignty can in any way interfere with the machinery of another sovereignty. Where is the authority which sustains such a proposition?

Mr. President, I desire to speak briefly on section 3. I do not desire to take time to do more than state constitutional principles which seem to me controlling. The bill, with reference to section 3, is based upon inaction, not action. Section 3 deals wholly with individuals and individual action. It does not purport to charge the State, as a State, with directing such action in any respect. According to section 3, the State is charged with responsibility when the individual violates his oath and the laws of the State and fails to perform his duty. I assume it is conceded—and was conceded by the able Senator from New York—that before we can legislate effectively we must deal with State action, and State action alone.

The fourteenth amendment says that no State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Section 3 undertakes to hold the State responsible for an action which is clearly outside any law prescribed by the State, any custom endorsed by the State, or any course sanctioned by the State.

The Senator from New York read yesterday some excerpts from the case of Virginia against Rives. In that case the Court said that so long as the officer is acting in the very teeth of the statute of the State of Virginia, so long as he is violating the laws of that Commonwealth, an appeal to the Supreme Court for the removal of the cause cannot be predicated upon his willful and criminal abuse of his power.

Every State in the land has laws which cover the misconduct which is here charged upon the part of the officer. He is punishable under the laws of the State. He takes an oath to support the laws of the State. If he joins a mob, or connives with a mob, and murder is committed, how can it be said the State is responsible for his conduct, when it has thrown about him every responsibility that a State can throw about the discharge of the duties of its officers? The case relied upon by the able Senator from New York [Mr. WAGNER], in supporting one of his positions, says that if the officer is acting contrary to law, in the teeth of the law, in violation of the law, the State cannot be held responsible for the act of the officer.

I have here an opinion by Justice Miller in *Gibbons* v. *United States* (75 U. S.). This decision does not bear on the fourteenth amendment, but on the general principle of the responsibility of a State or political organization for the misconduct and criminal acts of its officers. The opinion says:

> It is not to be disguised that this case is an attempt under the assumption of an implied contract to make the Government responsible for the unauthorized acts of its officer, those acts being in themselves torts. No government has ever held itself liable to individuals for the misfeasance, laches, or unauthorized exercise of power by its officers and agents.

Section 3 itself discloses that the officer is acting in contravention to his duty as prescribed by the laws of his State.

This same principle is clearly set forth in another manner in the civil rights case, where the Court said:

> It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this but, in order that the national will, thus declared, may not be a mere brutum fulmen, the last section of the amendment invests Congress with the power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition.

Judge Guthrie in his work on the fourteenth amendment says:

> It must be borne in mind that the fourteenth amendment does not confer jurisdiction to correct the erroneous or wilfully improper acts of State officers, or courts, in violation or disregard of law and that the grievances complained of must be sanctioned by statutes or some other form of State authority.

In *United States* v. *Harris* (106 U. S.) it is said:

> The language of the amendment does not leave this subject in doubt. When the State has been guilty of no violation of its pro-

visions, when it has not made or enforced any law abridging the privileges or immunities of citizens of the United States; when no one of its departments has deprived any person of life, liberty, or property without due process of law, or denied to any person within its jurisdiction the equal protection of the law; when, on the contrary, the laws of the State as enacted by its legislative and construed by its judicial, and administered by its executive, departments, recognize and protect the rights of all persons, the amendment imposes no duty and confers no power upon the Congress.

The Senator from New York contended that the case found in Two Hundred and Twenty-seventh United States Reports, Home Telephone & Telegraph Co. against City of Los Angeles, was the first case establishing a line of decisions which holds that under the fourteenth amendment the unauthorized act of an individual in taking property without due process of law may be restrained. What was the Home Telegraph case? It was a case involving utility rates, a suit in equity to enjoin the enforcement of utility rates on the ground that they were confiscatory. The rates were established under authority of the constitution of the State of California; they were established under the authority of a State law; they were established under the authority of a city ordinance adopted under the authority of the State law. It was State action; there was no doubt about it being State action. The rates were being collected for the benefit of the State. It was claimed in the case that the officer exceeded his authority, but the Court said—and this is the kernel of the contention—

To repeat, for the purpose of enforcing the rights guaranteed by the amendment when it is alleged that a State officer in virtue of State power is doing an act which, if permitted to be done prima facie would violate the amendment, the subject must be tested by assuming that the officer possessed power if the act be one which there would not be an opportunity to perform but for the possession of some State authority.

In other words, the officer was acting under State authority. The law was passed by virtue of the State power; the rates were fixed by authority of the State, and the only contention was that the officer had exceeded his authority. How exceeded his authority? He was undertaking to collect a rate which was confiscatory. Not that he was acting contrary to the laws of his State, or that he was acting without authority of his State, but because, under the authority of the State, he was doing that which was confiscatory of the rights of persons. It was in every sense State action.

Again the Senator from New York is of the opinion that the case of Sterling against Constantin, to use his own language, finally settled the question that under the fourteenth amendment the Federal Government could deal with an officer who was violating the laws of his State. Mr. President, I am afraid the Senator did not have time carefully to read this opinion. It did not decide that question at all. It expressly held that it was not decided. The question arose in this way: The State of Texas had passed a number of laws dealing with an oversupply of oil. The Governor of the State of Texas declared martial law on the ground that riots were taking place. A citizen who was seeking to exercise his right to develop his oil well brought a suit to restrain the Governor, and it was claimed in the suit that the Governor was exercising powers which he did not possess, that he was not authorized under the circumstances to declare martial law; that he was acting in excess of his power and was violating the laws of his State. The district court restrained him, and the Supreme Court affirmed the judgment; hence the conclusion is drawn that, although he may have been exercising powers which he did not possess, illegally and in usurpation of his powers, he was subject to restraint, nevertheless, under the fourteenth amendment. But the Supreme Court did not decide the question of whether or not he was exercising illegal powers. It assumed that he was exercising them, and the Court held, reading from the syllabus:

Whether or not the constitution and the laws of Texas purport to authorize the acts of the Governor complained of in this case is not decided. In disposing of the Federal question, such authority is assumed to have existed.

The Governor had declared martial law; he was interfering with the rights of a citizen; the citizen brought a suit in equity, claiming the Governor was acting in violation of law, but the Supreme Court said it was not necessary to decide that question; we find another ground upon which to settle the Federal question, and that ground has no relation whatever to the question of whether or not the Governor was violating the law.

The Senator from New York cited the case of Iowa-Des Moines Bank against Bennett, in which, he claims, an officer was held liable under the fourteenth amendment, notwithstanding the fact that he was not acting for the State but outside and beyond the authority of the State.

If the Senator will observe the language used on page 246 he will note that it was held by the Court that the officer in question was a State officer representing the State; that it was State action. There was no attempt to hold the officer himself by reason of the fact that he was acting or because he was acting outside the law. Here is what the Court says:

Here the exaction complained of—

That is, the tax—

was made by the treasurer in the name of and for the State, in the course of performing his regular duties; the money is retained by the State; and the judicial power of the State has been exerted in justifying the retention.

Therefore—what? It was State action. Under every rule of construction the officer was carrying out the will and purpose of the State.

Of course, if it can be said that it is State action, if the States complained of as not enforcing the law have not passed laws to protect their citizens or have passed laws which discriminate between the whites and the blacks—if the State is directing the action, undoubtedly the Congress can take such action as is necessary to deal with the subject; but where an officer acts in violation of the law, in disregard of the wishes of the State, in disregard of the demands of the State, his act cannot be treated as State action.

It will not be forgotten, Mr. President, that when the fourteenth amendment was under consideration just exactly that thing was proposed, to wit, that the Federal Government should go into a State and establish a relationship between the citizens in the matter of doing justice as between the citizens. It was proposed not to limit it to State action, but to leave it to the discretion of the Federal Government as to how the citizens might be protected in their respective communities. That proposal, however, was rejected, and the amendment was confined to the action of the State. So before there can be a proceeding under the fourteenth amendment it is necessary to show that it is against State action, something done by State direction and having State endorsement amounting to a State policy. Under the fourteenth amendment an individual who violates the laws of his State cannot be held responsible.

Mr. ANDREWS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Florida?

Mr. BORAH. I yield.

Mr. ANDREWS. Does not the Senator believe that the point he has just made absolutely disposes of the entire question so far as the constitutionality of the pending measure is concerned?

Mr. BORAH. It seems to me to be a disposition of it. The Senator from New York, who so ably presented this matter yesterday, seemed to me to rely upon cases which were clearly within the rule that, in order to come within the fourteenth amendment, there must be State action. I do not recall any opinion which was cited which sustains the constitutionality of the pending bill.

Mr. President, to recapitulate briefly, my contention is that so far as section 5 of the bill is concerned, it is an attempt upon the part of one sovereignty to establish a liability upon the part of another sovereignty toward its citizens; that it is an attempt upon the part of the Federal Government to say to the subdivisions of the States, "Thus and so is true, and therefore you are liable." That, I contend, is in violation of the long-established principle that

under our dual system one sovereignty cannot interfere with, curtail, or in any way embarrass the functions of the other sovereignty. I know of no rule, no decision, in contravention of that principle.

Mr. CONNALLY. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Texas?

Mr. BORAH. I yield.

Mr. CONNALLY. Does not the famous case of McCulloch against Maryland—which was cited by the Senator earlier, as I recall—afford authority for the absolute converse of the proposition that one sovereignty may interfere with the other? The Court there held that the State of Maryland could not tax the local branch in Maryland of the Bank of the United States because that would be permitting a State authority to interfere with the operations of a Federal power.

Mr. BORAH. It has been thoroughly established, by a long line of decisions, that neither sovereignty can interfere with the action of the other sovereignty.

My second proposition is that section 3 of the bill deals entirely with the action of individuals. It does not purport to hold a State responsible by reason of anything which the State may have done, any law which the State may have passed, any action which the State may have taken, or any direction which the State may have given. In other words, the officer is acting in direct contravention to the laws of his State; and I know of no decision which, under those circumstances, holds that the fourteenth amendment applies.

Mr. President, my interest in this matter centers primarily in the preservation of the integrity of the State. I believe the State is the fountain source of the people's power in this Government; and when that is destroyed, democratic government is at an end. Even in these days of change and advanced thought, I am not ashamed to say that I am still a believer in the old-time Americanism, in the rights of the States, in local government, and in all the policies and precepts and principles which made us great as a nation and which alone will keep us great. What we most need in these troubled days—and may Providence speed the coming—is a rebaptism of the national spirit and a rededication to the national ideals.

Outside of the formative period of this Government, and possibly the period just preceding the Civil War, there has never been so much discussion as at present of government, of the things which are happening and the things which may happen. Even whether we can hope to escape the remorseless trend of arbitrary power against popular government, as we see it in other countries, is very much debated and very much doubted. We perhaps are not the best judges of what is happening in this country with reference to government, because we are a part of the picture; and introspection by peoples is as rare and difficult as by individuals.

But, as to the outside world, we know what these things mean. They mean the ultimate silencing of the voice of the people in all the affairs of government.

And with reference to some of the vital things in the affairs of the people that seems to be true in this country. It is true that the people still elect their officers according to the established rules and according to ancient custom; but these elected officers generally transfer most of their power to officers whom the people do not elect and over whom they have no control. We lay on taxes far beyond the ability of the people to pay, and they seem as helpless to obtain relief as the denizens of the most arbitrary government of old Europe. We lay on debts upon debts, mortgaging the brain and the energy of our people even to the third and fourth generations, and all they can do is to mutter their protests and seek to pay. But, in my opinion, if we leave to the people the right and the power of local government, the right and the power of control of their States, the time ultimately will come when they will take back the powers which they may have forfeited by reason of war or of great emergency.

If we keep alive the feeling that they are a part of the Government, that it is their Government—stimulate the sense of responsibility, and preserve intact the means by which the people may act when they choose to act—we shall have the only guaranty there is for the continuation of democracy in this country. Under these conditions the hour of redemption will come of those things which may have passed beyond the people's control. Without this power, without this local authority, without this local training, without this training of citizenship in the States and in the communities, we cannot hope for the preservation of democracy. Whatever we may choose to call it, it will not be a democracy.

When the American Revolution began, followed by the period in which the Federal Government was set up, there at once appeared upon the scene, representing the Colonies, men equipped in all the great qualities of leadership, gifted with the power and the genius of statesmen, the equals of the best minds and the most experienced men of all Europe. In their understanding of politics in the highest and broadest and best sense of the term, in their ability to construct what their hearts and minds conceived, they were the peers, if not the superiors, of their adversaries in the Old World. They soon became the wonder as later they became the agony of all Europe. Where did they come from? Where did they get their training? In what school did they become the greatest debaters the world ever knew? Where did they acquire the arts of statecraft? In the New England town meetings; in the House of Burgesses of Virginia; in the local gatherings throughout the Colonies where the people met from time to time to discuss and consider and grapple with the great questions of the day. It was there that they were trained and equipped for their supreme undertaking. Had they not had this experience, this training, they might have had the theory but they never would have had the practical knowledge which enabled them to build a government that would endure. That is just as true today. It is in the States where the citizen comes in contact with his Government, where he feels that he is a part of the Government, where he can exercise his influence, where he is trained for the duties of citizenship.

While expressing deep regret that it is so, the opinion was advanced on this floor a short time ago that our States are gradually being effaced from our system. Soon to become, I assume, mere geographical expressions, with only sufficient force and dignity to provide messengers bearing the livery of State officials to run the errands of the Federal Government, all to the end that we may have a "more modern" democracy. I was led to compare this statement by an able Senator with a statement later made by a high official of the Government in which he advised us that a coup d'etat in a great South American country, in which the last vestige of parliamentary government was wiped out, in which the states were broken down and practically abolished as such and the whole vast Nation compounded into one unbroken empire, in which the voice of the people was silenced, was only a bold move toward a "more up-to-date and modern" democracy. Such are the prophecies and such are the conceptions of democracy in these extraordinary days.

It may be that some of us had our views on democracy warped in our early studies of Otis, and Sam Adams, and Thomas Jefferson, and Andrew Jackson, and Abraham Lincoln. But, from whatever source comes the view, it is my conviction that when the powers of government are separated from the people you have an empire, although it may be thought expedient, as did Augustus Caesar, to still call it a republic.

Under our system of government, when the States are sheared of their power, when the sovereignty of the States is broken down, then it is that the people are separated from the powers of government. It is in the States alone that the people really exercise the powers of government. For, after

all is said and done, the rights of the States are the people's rights; local government is the people's government. When these are destroyed, the people no longer speak to the Government; the Government speaks to the people.

If the fourteenth amendment is to be loosely construed, so as to permit the Federal Government to go into the States and fasten financial responsibility upon the States or the subdivisions of the States, if it can be construed so that it is possible to go into the States and make the duly elected officials of the people subject to the jurisdiction of the Federal Government, there is nothing left of the State government.

It may be, Mr. President, as proponents contend, but which I do not admit, that a few lives will be lost if we do not pass this measure, and which we will all regret. But many lives were lost to establish this Government, to establish this dual system, and the happiness and contentment of many millions will be lost if we do not preserve it.

My interest in this matter grows out of a desire to stay the encroachment of arbitrary power—which is what is proposed—upon the rights of the people at home.

We do not know what the future has in store for us as a nation, but we do know that the system of government which was brought forth on this continent nearly 150 years ago, baptized with the blessings and crowned with the wisdom of great leaders, has brought greater contentment and prosperity and more of freedom to the average man or woman than any form of government yet devised. This fact alone should burn into our very souls the determination to preserve it in all its essential principles. It is one thing to adapt and adjust principles to new conditions; it is another thing to permit new conditions to disregard principles—the former is the highest achievement of the statesman and the lawgiver, the latter the work of the timeserver and the adventurer.

Mr. President, everyone in this Chamber, every right-thinking person everywhere, regardless of section or race, will utter a word of thanks when this barbarous crime is no longer recorded in this country. I feel that time is near at hand. It seems to be clearly in sight. Is it worth while, is it necessary, is it just in view of the progress made, in the light of what the South has achieved, to place upon her the stigma of failure and to establish the precedent that the Federal Government may enter the States and seize and try as criminals the duly elected officers of a sovereign State? It would be an awful price to pay, a dangerous precedent to establish, even if the assurance of success upon the part of the States was not at hand. But with that assurance before us, it is incredible that we will do this thing.

Mr. GLASS. Mr. President——

The PRESIDING OFFICER (Mr SCHWELLENBACH in the chair). Does the Senator from Utah yield to the Senator from Virginia?

Mr. KING. I yield if I do not thereby lose my right to the floor.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Utah that he may yield to the Senator from Virginia without losing his right to the floor?

Mr. CLARK. Mr. President, for what purpose does the Senator desire to yield?

Mr. GLASS. I ask the Senator to yield in order that I may make a preferential motion.

Mr. CLARK. Then I must object to the request.

Mr. KING. Mr. President, I regret that the Senator from Missouri has exhibited so much intolerance in the attitude which he has taken.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. KING. No; I do not yield.

The PRESIDING OFFICER. The Senator refuses to yield.

Mr. KING. When the Senator from Virginia, a Member of the Senate for many years, and whose outstanding ability and patriotism command the admiration not only of Missouri Democrats but of Democrats and Republicans everywhere, rises and asks that a Senator may yield in order that he may make a preferential motion, I do not think it is quite proper for even the Senator from Missouri to interpose an objection.

Mr. President, of course I should be perfectly willing to yield to the Senator from Virginia or to the Senator from Missouri to make a preferential motion. I am inclined to think that under the rules either would have the right to recognition by the Chair, and that the occupant of the floor would lose none of his advantages and privileges under the rule which has been invoked by according recognition to the Senator who sought it at his hands.

Mr. McNARY. Mr. President, will the Senator yield?

Mr. KING. For a question.

Mr. McNARY. I shall propound a parliamentary inquiry, then, in order to preserve the rights of the able Senator from Utah.

The PRESIDING OFFICER. The Senator will state it.

Mr. McNARY. What is the preferential motion to which the Senator alludes? The Senator speaks of a preferential motion. I am not definitely certain what he has in mind.

Mr. KING. I had in mind that there was either a conference report or some important committee report which it was desired to submit to the Senate. Of course, if the Senate does not desire to receive an important report, or permit a preferential motion to be made, I can only insist upon my rights, and whoever rises and asks for recognition must state that it is a preferential motion if such be the case.

The PRESIDING OFFICER. The Chair has been advised by the Parliamentarian that if the Senator from Utah should yield, even for a preferential or privileged motion, the Senator from Utah would lose the floor, as business would thereby be transacted.

Mr. WAGNER. Mr. President, may I ask the Senator a question?

Mr. KING. I yield for a question only.

Mr. WAGNER. I wish to ask the Senator whether some of us are not entitled to know the nature of the preferential motion to be made before we give our consent to the unanimous-consent request.

Mr. KING. That is a matter for the Senator and others to determine for themselves. I am not the keeper of the conscience of the Senator from New York or the guardian of the rights and privileges of other Senators. It is as much as I can do to maintain my own rights in the face of a manifest determination on the part of certain Senators to force through a measure which is absolutely unconstitutional, the validity of which has been challenged by the consciences of all men who understand our Constitution, and, of course, challenged by the Constitution of the United States.

Mr. LEWIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Illinois?

Mr. KING. I yield for a question only. I cannot permit the Senator to interfere with my rights. If the Chair will protect me in my rights, I will yield for a question.

Mr. LEWIS. I merely ask the Senator if he will not find it convenient to yield to the Senator from Virginia to state what his motion is?

Mr. KING. I could not do so without losing the floor, without unanimous consent. I ask unanimous consent that I may yield to the Senator from Virginia without prejudicing my rights, or losing the floor.

The PRESIDING OFFICER. Is there objection?

Mr. McNARY. I object.

The PRESIDING OFFICER. The Chair hears objection.

Mr. BYRNES. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BYRNES. If the Senator from Utah yielded to the Senator from Virginia to make any motion which was debatable, the Senator from Utah could then be recognized to debate that motion, could he not?

The PRESIDING OFFICER. The Senator from Utah could then be recognized to speak on the motion made by some other Senator.

Mr. BYRNES. That was the thought I had in mind.

Mr. KING. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. KING. Would that preclude the Senator from Utah or any other Senator indulging in the broad discussion into which the motion might lead us, for instance, a consideration of some of the statements made by the Department of State, and our attitude toward foreign nations?

Mr. WAGNER. Mr. President, may I make a parliamentary inquiry?

The PRESIDING OFFICER. If the Senator will wait until the Chair may answer the inquiry of the Senator from Utah.

Mr. WAGNER. Certainly.

The PRESIDING OFFICER. The Chair rules that the Senator from Utah could discuss any question he might desire to discuss.

Mr. KING. And that would not be charged against me as one of the speeches under the two-speech rule which has been adopted?

The PRESIDING OFFICER. It would not.

Mr. WAGNER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from New York?

Mr. KING. I will not yield except for a question.

Mr. WAGNER. I wish to propound a parliamentary inquiry. Is there any power in the Chair to assure a Senator that he gives way for the purpose of permitting a colleague to make a motion he shall have the right to resume the floor the moment the motion is made?

The PRESIDING OFFICER. There is no such power in the Chair.

Mr. WAGNER. Any Senator may attempt to secure the floor?

Mr. KING. Mr. President, the interrogatory of the Senator from Utah was not as to whether he would be entitled, having yielded the floor, to resume the floor to the exclusion of other Senators who might seek recognition. The point made by the Senator from Utah in his inquiry was whether or not, if he yielded the floor at this time and a motion were made which was debatable, he might participate in the debate and discuss the question under consideration now before the Senate, and the Chair, very properly interpreting the rules of the Senate, held that he would not be confined to a discussion of what might be called technically the motion submitted by the Senator from Virginia or a motion made by any other Senator.

The PRESIDING OFFICER. That was the ruling of the Chair.

Mr. KING. I hope I have satisfied the Senator from New York.

Mr. WAGNER. Yes.

Mr. GLASS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Virginia?

Mr. KING. I yield.

Mr. GLASS. I desire to make a preferential motion.

Mr. McNARY. Mr. President, if the Senator from Utah yields for that purpose, he yields the floor.

Mr. KING. I have yielded the floor. I think I know enough about the rules without being instructed by the able Senator on the other side.

Mr. GLASS. Mr. President, I desire to make a preferential motion.

The PRESIDING OFFICER. The Senator will present it.

Mr. GLASS. I wish first to make a preliminary statement. The Senate Committee on Appropriations has been working very industriously almost every day on the appropriation bills which have been sent over from the House of Representatives. We have reported three or four of them, and they are on the calendar of the Senate. It is necessary to act on these bills. Action cannot any longer be delayed without great inconvenience to Senators and great inconvenience to the Government itself.

I move, therefore, that the Senate proceed to the consideration of House bill 8837, being the bill making appropriations for the independent offices.

The PRESIDING OFFICER. The question is on the motion of the Senator from Virginia that the Senate proceed to the consideration of House bill 8837.

Mr. CLARK. I suggest the absence of a quorum.

Mr. McNARY. Mr. President——

Mr. CLARK. I withhold the suggestion.

Mr. McNARY. Mr. President, I submit that the motion made by the Senator from Virginia is not a preferential motion.

The PRESIDING OFFICER. The Senator from Oregon is correct. It is not a preferential motion.

Mr. McNARY. It is a general motion to proceed to consideration of some bill on the calendar and has no preferential status.

The PRESIDING OFFICER. The Senator from Oregon is correct. It is not a preferential motion, but it is in order.

Mr. GLASS. I have always understood that a motion to take up an appropriation bill is a privileged motion.

The PRESIDING OFFICER. The Chair will state that the Parliamentarian has informed him that it is not a privileged or preferential motion.

Mr. GLASS. What does the rule mean then which says that it is a privileged motion?

The PRESIDING OFFICER. The Parliamentarian informs the Chair that the rule which says that a motion with respect to an appropriation bill is a privileged or preferential motion refers only to the circumstance when the Senate is considering the calendar under rule IX.

Mr. GLASS. The rule does not say that. It simply says it is a privileged motion. I made the motion, and, whether it is preferential or otherwise, it is in order.

Mr. CLARK. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Clark	Johnson, Colo.	Overton
Andrews	Connally	King	Pepper
Ashurst	Copeland	La Follette	Pittman
Austin	Davis	Lee	Pope
Bailey	Donahey	Lewis	Radcliffe
Bankhead	Ellender	Lodge	Reynolds
Barkley	Frazier	Logan	Russell
Berry	George	Lonergan	Schwartz
Bilbo	Gerry	Lundeen	Schwellenbach
Bone	Gibson	McAdoo	Sheppard
Borah	Gillette	McGill	Smathers
Bridges	Glass	McKellar	Smith
Brown, Mich.	Guffey	McNary	Thomas, Okla.
Brown, N. H.	Hale	Maloney	Thomas, Utah
Bulkley	Harrison	Miller	Townsend
Bulow	Hayden	Milton	Truman
Burke	Herring	Minton	Tydings
Byrd	Hill	Murray	Vandenberg
Byrnes	Hitchcock	Neely	Van Nuys
Capper	Holt	Norris	Wagner
Caraway	Hughes	Nye	Walsh
Chavez	Johnson, Calif.	O'Mahoney	Wheeler

The PRESIDING OFFICER. Eighty-eight Senators having answered to their names, a quorum is present.

The Senator from Virginia is recognized.

Mr. WAGNER. Mr. President——

Mr. GLASS. Mr. President, I thought I had the floor.

The PRESIDING OFFICER. The Senator from Virginia has the floor. Does the Senator from Virginia yield to the Senator from New York?

Mr. WAGNER. I beg the Senator's pardon. I thought the Senator from Virginia had yielded the floor.

Mr. GLASS. Mr. President, I repeat what I have already said. This appropriation bill has been upon the calendar now for, I think, 2 weeks. There are three other appropriation bills upon the calendar. Within the next few days the House will send over four other appropriation bills, and they will require action. I have not taken up any of the time of the Senate. Two or three days ago I believe I was permitted to speak for 12 minutes, but I have not undertaken any filibuster. However, those who are opposed to the so-called antilynching bill have been held up before the country as obstructing the public business. I now want it to be seen clearly who is obstructing the public business.

Here is the public business. It does not relate to a constitutional question. It is public business which ought to be transacted, and I shall insist upon my motion to take up House bill 8837.

Mr. CLARK. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CLARK. Would the effect of the motion, if carried, be to displace the pending measure as the unfinished business of the Senate?

The PRESIDING OFFICER. It would.

Mr. BYRNES. Under the rule, at the conclusion of the consideration of the appropriation bill a motion would be in order to consider the bill now under consideration?

The PRESIDING OFFICER. The motion would be in order to consider the antilynching bill or any other bill.

Mr. BARKLEY. And that motion would be debatable and subject to the same tactics of delay that have been invoked during the last several weeks with respect to the bill itself?

The PRESIDING OFFICER. It would be debatable; yes.

Mr. BANKHEAD. I ask the able leader of the majority what he means when he says the same tactics would be used?

Mr. BYRNES. Does not the Senator from Kentucky mean the delay which the Senator from Kentucky is now resorting to against the appropriation bills?

Mr. BARKLEY. May I ask the Senator to repeat his question? I did not hear his question.

Mr. BYRNES. The Senator from Alabama [Mr. BANKHEAD] wanted to know what kind of delay the Senator from Kentucky referred to.

Mr. BARKLEY. I referred to the same sort of delay that has been practiced in regard to the consideration of this bill.

Mr. BYRNES. Mr. President, I stated in addressing the Chair that I was satisfied it was the same kind of delay the Senator is now resorting to against the consideration of appropriation bills.

Mr. BARKLEY. No, I am not resorting to any delay against appropriation bills. I am going to make a statement with respect to my attitude on this motion in a few minutes, and I do not propose to do it with the view of influencing anyone's vote. So far as I am concerned, I do not care how the Members of the Senate vote on this question. I know how I am going to vote, and I know the reasons which actuate me in casting that vote. But we all know that we are in the midst of a filibuster. There is no question about that. There is no denial of it. No one denies it or apologizes for it. Those who have engaged in it have a perfect right to do it, and from me there has been no criticism of that course. They had a perfect right to pursue that course.

Inasmuch as the Senator asked me what I meant by "the same sort of tactics," I will say that I mean exactly what I said, that the filibuster has been invoked; it has been in existence for nearly a month, and the point of order on which I requested enlightenment was whether a motion, as suggested by the Senator from South Carolina, to take up the bill again if it is now displaced, would be subject to the same sort of procedure that has been carried on with respect to the bill itself.

Mr. CONNALLY. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield if I have the floor.

Mr. CONNALLY. Does the the Senator from Kentucky regard the address made this morning by the Senator from Idaho [Mr. BORAH] as part of the filibuster?

Mr. BARKLEY. No, I do not. The Senator from Idaho is opposed to filibusters, and always has been, and the time he has occupied has been occupied with legitimate debate on the merits of the proposition. That cannot be said with respect to all the time that has been occupied.

Mr. GLASS. Mr. President, I ask the Senator from Kentucky if he thinks the proposal made by me to proceed with the consideration of appropriation bills is a part of the filibuster?

Mr. BARKLEY. I do not, I will say to the Senator frankly. I would not even intimate that the Senator from Virginia would be a party to a filibuster. So far as I know, he never has been, and I do not regard his motion as a part of any such plan; and I will say to the Senator frankly that if his motion should carry it would end the filibuster which has been in progress here for nearly a month. I do not at this moment desire to make the statement I had planned to make with respect to the pending motion, if any other Senator desires to discuss it. I might as well, though, while I have the floor, make the statement I intended to make.

A week ago yesterday the Senate voted on the question whether it was willing to limit debate on the pending measure. The rules required a two-thirds vote in order to carry the motion for cloture. The motion did not receive a majority. With the unanimous aid of our distinguished opponents across the aisle, with one exception, it received 37 votes, I believe, to 51 votes against it. Although a majority of the Members on this side voted to limit debate, the motion received only one vote on the other side. Whether, if all of those on the other side had voted for the motion, it would have been possible to obtain the necessary two-thirds, I am not in a position to say. If that motion had been agreed to, and if cloture had been adopted, under the rule 96 hours of debate would still have been available on this bill; 96 hours of debate, spread out over a period of days at the rate of 6 hours a day, would have meant 16 days of debate yet remaining on this measure; and, with all the delays, overlappings, and loss of time which usually occur with respect to the sessions of the Senate, it probably would have meant that for another month, even if cloture had been adopted, we would have been debating this measure before it could have been brought to a vote.

I do not mean to intimate that every Member of the Senate would have exercised his right to speak for an hour on the bill if the motion for cloture had been adopted, but under the motion for cloture, and under the rules, every Senator would have had a right to speak for an hour on the bill or any amendment to it; so that 96 hours could have been consumed, which would have delayed the matter for another month.

The motion for cloture did not receive a majority. At the time the vote was announced I stated that if a vote could not be obtained, and if the filibuster—which has been acknowledged as being in progress—were to continue, in the near future the Senate would be called upon to decide how much longer it would be willing to consider this matter before taking up other business for consideration and displacing the bill that is now the pending and unfinished business.

I do not know how long the Senate will be willing to stay in session in the futile debate which has been in progress on this measure. As I have said here repeatedly, I regard it as my duty to try to bring to a vote every bill which is favorably reported to the Senate by a responsible committee. If that is not a part of my duty, then I do not know what my duty is. I have been attempting to bring about that result in the performance of my duty. I am not willing that this whole session shall be wasted or consumed in a futile effort to bring this bill to a vote. Whenever the Senate makes up its mind that it will not limit debate and that it will not bring this bill to a vote, I myself shall be ready to vote to displace it with some other legislation. I do not think that hour has yet been reached. I do not think this motion ought to carry today, and for that reason I shall not vote for it.

Mr. GLASS. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. GLASS. Does the Senator think important appropriation bills are not a part of business of the Senate?

Mr. BARKLEY. The Senator and I do not disagree about that. The regular appropriation bills are, of course, important business of the Senate; but the appropriation bills now pending are for the fiscal year 1939, and the appropriations to be made thereunder will not be available until July 1, 1938.

Mr. GLASS. Do not some of the bills contain provisions making appropriations immediately available?

Mr. BARKLEY. Every appropriation bill now on the calendar can be disposed of by the Senate in a week.

Mr. GLASS. I doubt whether the one we are discussing will be disposed of in a week.

Mr. BARKLEY. If not, its consideration will take longer than the consideration of the average appropriation bill takes on the floor of the Senate.

I have conferred with the proponents as well as the opponents of the pending measure. It has been my purpose, and is my purpose, within the next few days, to confer with those who are urging this legislation as well as with the opponents of the legislation to see if we can take stock of the situation and arrive at a conclusion as to how much longer the Senate wishes to consider the bill, and when it will be appropriate for any Senator to make a motion to displace it in favor of the consideration of some other bill. Until I have had such an opportunity, I do not propose to vote for the motion of the Senator from Virginia to take up the appropriation bill.

Mr. GLASS. Mr. President, do the proponents of the pending bill have to go to New York to find out whether we may proceed with the appropriation bill?

Mr. BARKLEY. I am not one of the proponents, and I do not know of any proponent who has gone to New York to find out how he shall vote or how much longer the Senate shall consider the bill.

Mr. GLASS. Delegations have come here from New York.

Mr. BARKLEY. Every Senator acts upon his own individual responsibility. If a Senator wants to go to New York, to Virginia, to Puerto Rico, or to California to find out how he shall vote, it is none of my business, and I do not propose to inquire into it.

Mr. President, the Senate will not be in session tomorrow. It will be in session Monday and Tuesday. On Wednesday we propose to take up the farm bill conference report, which I understand is to be acted upon in the House on Tuesday. It seems to me that after the disposition of the farm bill it will be the appropriate time to consider whether we are ready to lay the pending measure permanently aside—which would be the effect of this motion—and take up some other legislation.

I have expressed to the Senate my views with respect to the orderly procedure. For that reason I shall not vote for the pending motion; but I do not commit myself as to how I shall vote at any time in the future when a motion is made to take up some other legislation. I shall be governed by the situation which may exist at that time. I do not think this motion ought to be adopted today.

Mr. CONNALLY. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. CONNALLY. I rise to take up only about 2 minutes of the time of the Senate.

All sorts of arguments are utilized from time to time to carry some point. The word "filibuster" is hurled about the Senate Chamber as though it connoted some form of impropriety or some sort of legislative odium. So far as a filibuster is concerned, it seems to me that it is all in the point of view. If one Senator is for a bill and another against it, the one who is against it is a filibusterer. If he is for it, there is no filibuster.

Today the filibuster is against taking up the independent offices appropriation bill. Every Senator, I think, is convinced in his own mind that the business of the session ought to be transacted. To some minds, the business of the session consists of only one bill on the calendar. Others are determined that that one bill shall not pass. I am speaking not only for myself but also for a large number of similarly minded Senators. Some Senators who are bitterly opposed to the bill have not as yet spoken on the measure.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. BARKLEY. They might have had an opportunity to speak if some of those who have spoken had not consumed so much time. I do not say that in criticism; but certainly the Senator from Texas cannot blame any Senator who favors the bill for delaying a vote on it or talking upon it.

Mr. CONNALLY. Let me say, Mr. President, that the United States Senate is a free forum. It is the only one left today on this earth of ours. I am amazed to hear the leader of the majority party complain that Senators in discussing this bill have not made speeches to suit his own pattern or have not made them short enough to suit him.

Mr. BARKLEY. I am not complaining. The Senator from Texas was complaining because some of his colleagues have not as yet had an opportunity to speak.

Mr. CONNALLY. They probably will have an opportunity.

Mr. BARKLEY. I certainly shall not object to their speaking. I should like to hear them. I am impatient to hear all the arguments on both sides of this question. For that reason I have not favored, and never have favored, a filibuster.

Mr. CONNALLY. Mr. President, let us see who is in favor of the filibuster. The motion under consideration was made by the Senator from Virginia [Mr. GLASS]. He was selected chairman of the Appropriations Committee, not by any group, but by the Senate. He is here asking the Senate to take up the business of the administration, and to carry forward the program of the President. The reorganization bill is here awaiting attention. It has been here for a month. The appropriation bills are not the only measures ready for consideration.

I resent the slurring and scornful talk about a filibuster. We have a right to speak in this Chamber; and when we cease to have the right to speak here our sentiments and the sentiments of those whom we represent, free government, as expressed by the Senator from Idaho [Mr. BORAH], will begin to deteriorate and be destroyed.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. BARKLEY. I wanted to ask the Senator from Virginia [Mr. GLASS] a question, but he has stepped out of the Chamber. Perhaps the Senator from Texas can answer it.

Mr. CONNALLY. I doubt whether I can.

Mr. BARKLEY. I stated a while ago that the appropriation bills do not become effective until the 1st of July. The Senator from Virginia [Mr. GLASS] suggested that some of them might carry items making money available before that date. Can the Senator from Texas tell me whether the independent offices appropriation bill contains any such items?

Mr. CONNALLY. I cannot.

Mr. BARKLEY. If so, what are they?

Mr. CONNALLY. I think one or two of the deficiency appropriation bills contain such appropriations.

Mr. BARKLEY. The motion now is to take up the independent offices bill.

Mr. CONNALLY. That is true.

Mr. BARKLEY. I do not know whether or not it contains any emergency appropriations.

Mr. CONNALLY. I do not know about that.

Mr. BYRNES. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. BYRNES. At the moment I do not recall any particular item under which money becomes immediately available. I know, however, that in the naval appropriation bill, with the handling of which I am charged, there are a number of items with respect to which funds are made immediately available. I could not answer as to the others.

Mr. BARKLEY. The motion is not to take up the naval bill, but the independent offices bill.

Mr. BYRNES. As I stated, I am unable to answer as to it.

Mr. BARKLEY. There may be some item in the independent offices bill which ought to be adopted today or tomorrow, but I do not know of such an item. Unless there is such an item which will take effect in the fiscal year 1937–38, the money provided in that bill will not be available until July 1.

Mr. BYRNES. I may say, Mr. President, even as I open the bill, I happen to open it at page 51, under the heading

"Pensions, Veterans' Administration," and find that the sum of $410,000,000 is made immediately available for the payment of pensions.

Mr. CONNALLY. Mr. President, whether or not this particular appropriation bill carries emergency appropriations, if it is acted upon and gotten out of the way, the ones that do carry such appropriations will come before the Senate that much earlier.

Mr. BARKLEY. Would it not be more orderly first to bring up those that have emergency appropriations?

Mr. CONNALLY. If the Senator from Kentucky will make such a motion, he can pick his own bill; he can make a motion to take it up. He is the leader.

Mr. BARKLEY. Whether I make a motion or not, I am not making it today, and I am not voting for it today. What I will do in the future will depend upon circumstances as they drag themselves along leisurely in the body of which we are both Members, but if I do make a motion of that sort at any time—and I am not saying that I will or will not—I will undertake to make a motion that pertains to the most important and the most emergent bill that could be considered by the Senate.

Mr. CONNALLY. Will the Senator indicate—he asked me a question—what is that bill?

Mr. BARKLEY. I am not ready to answer. I said this was a day-to-day proposition, or a month-to-month proposition, as it seems to have been, and it may turn out to be a year-to-year proposition.

Mr. CONNALLY. I will be very glad to follow the Senator from Kentucky when he makes the motion to take up the most emergent matter.

Mr. BARKLEY. I am always glad to have the Senator from Texas follow me, and I am always glad to follow him.

Mr. CONNALLY. I wish the Senator from Kentucky would show some inclination to follow the Senator from Texas.

Mr. BARKLEY. I would be delighted to have the Senator's inclination along the same line, I will say to him.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. McKELLAR. The Senator from Kentucky asked what appropriations in the independent offices bill were made immediately available. I find on page 51 of the bill that $410,000,000 appropriated for the payment of pensions to the old soldiers is made immediately available.

Mr. BYRNES. Mr. President, will the Senator yield?

Mr. CONNALLY. I yield.

Mr. BYRNES. May I say that in the very next paragraph this bill carries an appropriation for adjusted-service and dependent pay of veterans in the sum of $250,000, to be immediately available and to remain available until expended.

Mr. BARKLEY. Mr. President, of course, the Senator knows that all the old soldiers will be paid just as regularly as they have been paid, whether this bill passes today or whether it passes week after next. The old soldiers and the veterans will all be paid, and later on a deficiency bill, if necessary, will be brought in to make up any deficiency. There is no trouble about the old soldiers. They are all going to be paid; Uncle Sam is not going to neglect his ex-service men.

Mr. McKELLAR. They cannot be paid unless the money provided in this bill is appropriated.

Mr. BARKLEY. That is what deficiency bills are here for, to appropriate money that has already been paid to somebody.

Mr. McKELLAR. This is not a deficiency bill.

Mr. BYRNES. Mr. President, will the Senator from Texas yield for a question?

Mr. CONNALLY. I yield for a question.

Mr. BYRNES. The Senator from Kentucky calls the soldiers of the World War "old soldiers."

Mr. BARKLEY. No; I was talking of old pensioners, which is the item mentioned by the Senator from Tennessee, involving some $400,000,000, he said. But the item mentioned by the Senator from South Carolina is only $250,000, and I know the Senator from South Carolina is too good a financier to confuse $400,000,000 with $250,000.

Mr. BYRNES. That may be true, but when $250,000 should be paid to men who need their adjusted pay and have not received it, they do not confuse four hundred million with $250,000. They know that they are entitled to their compensation and that it will not be paid promptly if the appropriation bill is not passed which makes the amount immediately available.

Mr. BARKLEY. The Senator from South Carolina is not the slightest confused about the situation, either with respect to the payment of the old soldiers or the young soldiers.

Mr. BYRNES. The Senator from South Carolina, however, knows that it would be paid much quicker if the Senator from Kentucky would be good enough to join in setting aside the pending measure and passing the appropriation bills.

Mr. GLASS. If he would join setting aside a measure that is absolutely futile. The Senator from Kentucky has talked about futile debate, in which I have not engaged, but no debate that has been had here is as futile as is the pending bill. Everyone who listened to the address of the distinguished Senator from Idaho this morning knows that the measure is utterly unconstitutional, and would be so declared, and yet we have wasted nearly a month of the time of the Senate in discussing an infernal, unconstitutional bill. [Laughter.]

SEVERAL SENATORS. Vote!

Mr. WAGNER. Mr. President, I merely wish to make a brief statement, not in answer to the characterization of the bill by the Senator from Virginia, for I know his views; he has expressed them time and time again; but he said he was anxious to find out who is obstructing the business of the Senate.

Mr. GLASS. I have already found out; the Senator is doing so. [Laughter on the floor and in the galleries.]

Mr. LEWIS. Mr. President, I am compelled to make a point of order and to request the Chair to inform the occupants of the galleries that, under the rules of the Senate, demonstrations may not occur without great disturbance to the debate and to questions and answers here on the floor of the Senate.

Mr. WAGNER. Mr. President, I would not raise any question as to that.

Mr. BARKLEY. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from Kentucky?

Mr. WAGNER. I yield.

Mr. BARKLEY. Mr. President, the galleries have been filled for weeks and weeks. The proceedings have been dull; they have been prosaic; they have been more or less uninteresting. None of those who have frequented the galleries for weeks have had really any entertainment worthy of their trouble in coming here. Now that the occupants of the galleries have a chance to enjoy the Senate, why not let them do it? [Laughter.]

Mr. WAGNER. I am not objecting, any more than I am objecting to any statement that the Senator from Virginia may make; I know such statements make him happy; I want him always to be happy; and when what he says is critical, it does not particularly concern me. I merely wish to say——

Mr. LEWIS. Mr. President, I should like to interrupt for a moment to say that the able leader from Kentucky would leave the intimation, I fear, that the enjoyment of the galleries is caused by the fact that the proceedings in the Senate have rapidly been transformed into a motion-picture performance.

Mr. WAGNER. Speaking seriously, Mr. President, we have not obstructed the business of the Senate. This bill is here as the result of a unanimous-consent agreement; it is here for the consideration of the Senate, and its proponents have been ready and are ready now to vote upon the question. How can anyone charge the proponents of this bill with obstruction when they are prepared to accept the verdict of the Senate at this moment upon the final passage of the bill or upon the consideration of any amendment to it?

I wish to say a further word. The carrying of the pending motion will end the antilynching bill for this session. The Senate knows how difficult it is to make a successful motion to bring up such measures for the consideration of the Senate. Neither I nor my colleagues will ever have another opportunity, I am sure, if this motion shall be carried, again to bring this bill before the Senate for consideration. So those who vote in favor of the motion—let there be no misunderstanding about it—have decided to terminate this matter and that the antilynching bill shall have no further consideration by the Senate.

Mr. GLASS. Mr. President, the Senator from New York has just confirmed what I said a while ago, that he is filibustering now against the appropriation bill in order that this futile bill which he has been advocating may be acted on; and it is not going to be acted on.

Mr. WAGNER. It is not going to be acted on?

Mr. GLASS. No; it is not going to be acted on.

Mr. WAGNER. Then, who is making the threat of a filibuster?

Mr. GLASS. The Senator is doing the filibustering; he is not only making the threat but he is doing it.

Mr. WAGNER. Let us have a vote upon the measure now.

Mr. GLASS. I propose to present a measure which is strictly a business matter; one which will never be decided to be unconstitutional; but the Senator insists upon keeping before the Senate this wretched bill, of which he is the proponent.

SEVERAL SENATORS. Vote!

The PRESIDING OFFICER. The question is on the motion of the Senator from Virginia [Mr. GLASS] that the Senate proceed to the consideration of House bill 8837.

Mr. McNARY and other Senators asked for the yeas and nays.

The yeas and nays were ordered.

Mr. AUSTIN. Mr. President, I should like to have the parliamentary situation stated as to the vote. As I understand, a vote "yea" will be a vote to set aside the pending bill?

The PRESIDING OFFICER. The Senator from Vermont submits a parliamentary inquiry as to the effect of votes "yea" and "nay." The Chair will state that a vote "aye" is in favor of the motion of the Senator from Virginia to make House bill 8837 the order of business. The clerk will call the roll.

The Chief Clerk called the roll.

Mr. LEWIS. I announce that the Senator from Rhode Island [Mr. GREEN] is absent because of illness.

My colleague [Mr. DIETERICH] and the Senator from South Dakota [Mr. HITCHCOCK] are detained on public business.

The Senator from Nevada [Mr. McCARRAN] is detained on official business.

The Senator from Wisconsin [Mr. DUFFY] and the Senator from New Mexico [Mr. HATCH] are detained on important departmental matters.

I am authorized to say that each of these Senators, if present and voting, would vote "nay" on this motion.

The result was announced—yeas 34, nays 52, as follows:

YEAS—34

Andrews	Caraway	Herring	Pittman
Bailey	Connally	Hill	Pope
Bankhead	Ellender	King	Reynolds
Berry	Frazier	McKellar	Russell
Bilbo	George	Miller	Sheppard
Borah	Glass	Norris	Smith
Burke	Hale	O'Mahoney	Wheeler
Byrd	Harrison	Overton	
Byrnes	Hayden	Pepper	

NAYS—52

Adams	Davis	Lodge	Radcliffe
Ashurst	Donahey	Logan	Schwartz
Austin	Gerry	Lonergan	Schwellenbach
Barkley	Gibson	Lundeen	Smathers
Bone	Gillette	McAdoo	Thomas, Okla.
Brown, Mich.	Guffey	McGill	Thomas, Utah
Brown, N. H.	Holt	McNary	Townsend
Bulkley	Hughes	Maloney	Truman
Bulow	Johnson, Calif.	Milton	Tydings
Capper	Johnson, Colo.	Minton	Vandenberg
Chavez	La Follette	Murray	Van Nuys
Clark	Lee	Neely	Wagner
Copeland	Lewis	Nye	Walsh

NOT VOTING—9

Bridges	Green	Hitchcock	Shipstead
Dieterich	Hatch	McCarran	White
Duffy			

So the motion of Mr. GLASS was rejected.

MESSAGE FROM THE HOUSE—RETURN OF A BILL

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, requested that the Senate return to the House of Representatives the engrossed bill (S. 2194) to provide for the semiannual inspection of all motor vehicles in the District of Columbia, together with the House engrossed amendments thereto.

Mr. KING. Mr. President, as chairman of the Committee on the District of Columbia, from which committee the bill came, I have no objection to the request of the House being granted, and I move that it be granted.

The PRESIDING OFFICER. The question is on the motion of the Senator from Utah.

The motion was agreed to.

The PRESIDING OFFICER. The bill, together with the engrossed amendments, will be returned to the House of Representatives, in compliance with its request.

PREVENTION OF AND PUNISHMENT FOR LYNCHING

The Senate resumed the consideration of the bill (H. R. 1507) to assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Florida [Mr. PEPPER] to the amendment, as modified, of the Senator from Illinois [Mr. LEWIS].

Mr. PEPPER. Mr. President, with the permission of the Senate, I desire to withdraw the amendment which I previously tendered to take the place of the pending amendment of the Senator from Illinois [Mr. LEWIS], and offer in its stead the following amendment:

Instead of the words in lines 11, 12, and 13, "between members of groups of lawbreakers such as are commonly designated as gangsters or racketeers", insert "except when such violence is commanded or required by the law of the State in which such violence occurs."

The PRESIDING OFFICER. The Chair will ask the Senator from Florida to send the amendment to the desk, so that it may be stated by the clerk.

In lieu of the amendment formerly offered by him, the Senator from Florida offers an amendment, which will be stated.

Mr. KING. I ask for recognition after the amendment is stated, Mr. President.

The CHIEF CLERK. On page 7, line 11, before the word "between", it is proposed to insert "except when such violence is commanded or required by the law of the State in which such violence occurs."

Mr. LEWIS. Mr. President, may I ask the Senator from Florida whether he tenders this amendment as a substitute for the one tendered by myself or as an amendment to my amendment?

The PRESIDING OFFICER. The Chair understands it to be a perfecting amendment to the amendment of the Senator from Illinois.

Mr. KING. Mr. President, on Wednesday, the 2d instant, I addressed the Senate concerning conditions in the Orient, and particularly the military operations of Japan in China. I referred to various treaties which Japan had entered into with other nations, among them the Nine Power Treaty, the Kellogg-Briand Pact, the Versailles Treaty, and the obligations imposed by those treaties upon Japan as well as other signatories to the same. I submitted facts showing that Japan was engaged in military operations in China for the purpose of overwhelming the Chinese Government and establishing control over large portions of China if not the entire territory of China. The hour of adjournment arrived before I had concluded my remarks. On Thursday, February 3, I was entitled to the floor, but at the request of the Senator from New York [Mr. WAGNER] I yielded for him to address the

Senate. At the conclusion of his remarks I resumed discussion of conditions in the Orient, and particularly Japan's violation of treaties and the steps taken by various governments to secure from Japan her adherence to treaties affecting China which Japan had violated, and is now violating. Upon the convening of the Senate today I obtained unanimous consent to yield to the Senator from Idaho [Mr. BORAH], and he has just concluded his important and able address conclusively demonstrating the unconstitutionality of the pending measure.

The Senator from Florida has just offered an amendment to the same, which I shall discuss later, but it is my purpose to further consider Japan's invasion of China, and the efforts made by various governments to terminate hostilities in China, and secure Japan's adherence to treaties to which she is a party. However, before proceeding to a discussion of these questions I desire to briefly refer to a number of matters growing out of the proceedings of this day.

I have heretofore announced my opposition to the pending bill, believing it to be in violation of the Constitution of the United States. I know that there is a growing disposition, not only in executive departments but in the legislative branch of the Government, to strengthen the power of the Federal Government and to interfere with the rights of the States. Measures are supported and policies advocated that are inconsistent with our form of government, and which, at the expense of the States and individual rights, magnify the Federal Government.

The concept of a dual form of government adopted by the founders of this Republic has been regarded as one of the greatest achievements in the field of governmental and political development. It was an important contribution to the science of government. Under the system established by the fathers, the States and the inhabitants within the States have enjoyed democratic government and peace and prosperity. The inhabitants of the various States have increased in wealth and the resources of the various States have been developed, and the Federal Government, by virtue of strong and independent units, has grown in influence until the world recognizes this Republic as the greatest and most important Government in the world.

Socialism has undermined the foundations of other governments, and centripetal forces have been developed which are concentrating political authority, and, indeed, economic power, of arbitrary and autocratic governments. As has been frequently said, we have a government of indestructible States, and the Federal Government has only limited authority, and it must find in the Constitution under which it exists, and by which it was created, authority for whatever powers it may attempt to exercise; but that principle is being honored more by its breach than by its observance. In other words executive departments and bureaucratic agencies are reaching out for more power in political, economic, and industrial fiields. There seems to be a movement to establish a Hegelian system of government—a system under which power is centralized at the expense of the people and of local self-government. Because of the depression many of the people have forgotten the fine qualities of those who laid the foundations of this Republic and who built up cities, counties, and States, and carried the frontiers of the Republic from the Atlantic to the Pacific coast. There are many who apparently are willing to abandon the philosophy which shaped this Republic and to accept foreign views expounded by advocates of totalitarian states. As stated, there are some who are drawn into the philosophy of Hegel, and that upon which socialism and fascism rests. Many Americans join in the exaltation of the Federal Government and of political and governmental authority and apparently seem desirous of surrendering their independence and personal prerogatives.

Without being critical, I have stated upon some occasions that not only officials in executive departments but Senators fail to defend the rights of the States and of local self-government and seem to be carried away by the sweeping tide of an increasingly triumphant nationalism.

Mr. President, I make no apologies for opposing measures which I regard as unconstitutional, even though that opposition may involve a demand for full consideration of measures and a discussion of the consequences which largely result from their approval. Senators are representatives of sovereign States. In a sense they are ambassadors of sovereign governments and have the right—and it is their duty—to protest against policies and measures which impinge upon the rights of their States and to resort to every honorable means to defeat measures which tend to undermine our form of government. In my opinion, Senators would fail in their duty to their States and to their country if they did not vigorously and aggressively oppose measures which strike at our dual form of government and tend to centralize unauthorized power in the Federal Government and in its bureaucratic organizations.

Under our form of government the smallest State is the equal of the largest and most populous State in the Senate of the United States. The Constitution would not have been adopted if representation in the Senate had been based upon population. The independent and sovereign States refused to assent to any provision that would not give them equal representation in the Upper Chamber. They rested their case upon the proposition that each State was sovereign, was independent, and hence each State was willing to grant a limited amount of its power to the Federal Government. It was not intended that the organization which they created—to wit, the Federal Government—should have unlimited authority. They insisted that there should be one branch of the legislative body which should place the States upon an equality.

Senators, as I have stated—and I emphasize the statement—are ambassadors of sovereign States, and it is their right and duty as ambassadors to defend their States and our form of government, and to oppose every measure which tends to weaken the foundations of sovereign States. There are too many iconoclasts not only in other lands but in our own country; too many persons who would batter down the noble structure erected by our fathers. There are some Americans who regard with no little favor the Governments of Russia and Germany and Italy, wherein vast powers are concentrated in the hands of executive authority. They decry our dual form of government and deliver many panegyrics in behalf of governments where almost absolute power is exercised by one or more individuals. Absolutism unfortunately is not dead but is moving aggressively to conquer and to rule in many parts of the world. Patriotic Americans must resist every movement that seeks to aggrandize the Federal Government and the strengthening of executive and bureaucratic forces in our country.

Mr. President, I make no apology in opposing this measure or any measure that I regard as a violation of the Constitution and an assault upon the integrity of the States. In my opinion, this so-called antilynching bill is a challenge to the police powers of the States; it is a declaration that the Federal Government may enter every State and control its internal affairs and interfere with its police powers. If this bill may be sustained, then the Federal Government may assert jurisdiction over all matters recognized from the beginning as within the police power of the States. Every assault, every battery, every homicide, every criminal offense committed in the States would be brought within the jurisdiction and authority of the Federal Government. The Supreme Court of the United States in the Cruickshank case referred to the constructions sought to be placed—by some who do not understand our form of government—upon the fourteenth amendment, as an attempt to "degrade the States." Believing as I do that this bill is an attempt to "degrade" the States, to weaken our form of government, to increase the power of the Federal Government illegally and unconstitutionally, I feel constrained to do all that I can in a proper way to prevent its being enacted into law.

The Senator from New York has indirectly criticized those who oppose the bill and has demanded a vote. He asserts that a majority of the Members of the Senate will vote for the bill. As to that I do not know. I do know that the bill is a vicious, an indefensible assault upon our form of government. I do know that majorities are not

always right. I do know that the test of whether a government is liberal and is democratic is whether the rights of minorities are protected. I do know that the popularity of a measure does not determine its validity, its morality, or its virtue. Unanimity never determines the righteousness of a cause. Fortunately for the world, there have been, from time to time, persons who resisted the clamors of the crowd and sacrificed themselves in defense of truth and of principles and policies the maintenance of which is essential to justice and the cause of civilization. The Senator complains about there being opposition which he characterizes as a filibuster. Mr. President, there are occasions when filibusters are not only justified but demanded.

I participated in a filibuster under the administration of President Wilson. As will be remembered, he returned from Paris and presented to the country and to Congress the Covenant of the League of Nations. The Versailles Treaty had not been completed, and the President was required to return to Paris. It was uncertain as to when the President would be able to return to the United States. A number of Senators believed that there were upon the statutes a number of measures which had been enacted during the war and which, having served their purpose, should be repealed. I was among the number that believed that there should be a special session of Congress called for the purpose of repealing various laws and dealing with pressing post-war problems. The President was overwhelmed with work and the heavy responsibilities resting upon him. Not receiving any indication as to whether a special session would be called for the purpose of dealing with post-war problems, some of which were pressing for consideration, a number of Senators, led by the then senior Senator from Wisconsin, Robert M. La Follette, Sr., cooperated for the purpose of creating a condition that would compel an extra session. To that end we opposed the appropriation bills carrying hundreds of thousands of dollars for the Army and for the Navy.

Congress was to adjourn on the 3rd of March, and unless an extra session were called, Congress would not convene until the following December. Opposition to the appropriation bills mentioned continued. Some Senators charged that the opposition amounted to a filibuster. Be that as it may, an adjournment was had and there were no appropriations made for the Army and for the Navy for the coming fiscal year. I believed that so-called filibuster was warranted. A special session was called early in the spring of 1919, and some of the war measures were repealed, and laws dealing with problems resulting from the war received consideration.

We all recall the famous so-called filibuster against the Force bill. That measure was an inheritance from the days of the infamous reconstruction acts. Able Senators debated and denounced it, and continued their opposition until finally they triumphed, and the bill was defeated. Both the North and the South rejoiced over the defeat of that bill, a defeat which was only made possible by what was then called a filibuster.

Mr. President, I dislike situations which compel protracted opposition to proposed legislation. I regret that measures are from time to time proposed which possess such infirmities, injustices, and other imperfections as to warrant their defeat even though to accomplish that prolonged opposition is required.

I now return to a consideration of the matter I was discussing yesterday when I yielded to the Senator from New York [Mr. WAGNER]. I was discussing the Sino-Japanese situation, and Japan's violation of the Nine Power Treaty, the Four Power Treaty, the Kellogg-Briand Pact, and the Versailles Treaty. I had pointed out the course which Japan had pursued and was pursuing, in bombing cities and killing men, women, and children who were noncombatants in order to compel the Chinese Government and the Chinese people to submit to the control of their country by the Japanese Government.

The Senator from Idaho [Mr. POPE] asked at the close of the discussion yesterday whether I believed the ruthless, brutal course being pursued by Japan in China was for the purpose of creating a spirit of fear and terror among the Chinese people so that they would not be able longer to resist the invasion of the military forces of the powerful aggressive Government of Japan. I replied, in substance, that the evidence showed conclusively that terroristic practices were employed by Japan, that the Advisory Committee of the League of Nations had stated, after an investigation, that the course pursued was one of terrorism, and that Japan's purpose was to break the will of the Chinese people. Indeed, Mr. Hirota, the Japanese leader, stated that Japan must break the will of the Chinese people, and continue hostilities until the will of China was broken and there was submission by the Chinese to the policies and demands of the Japanese Government.

Mr. President, one of the ablest correspondents in China is William Henry Chamberlin, whom I have known for many years. When I was in Russia in 1923 I met him in Moscow. He has written a book about conditions in Russia which I think is accepted by all familiar with that country as a very fair exposition of the ideology of the Marxian philosophy and of the conditions which prevail in Russia. I met him when I was in Shanghai, China, 2 years ago. I learned from him about conditions in China and in Japan; and since then I have seen articles which he has written descriptive of the situation there, which, in my opinion, support the views which I expressed yesterday.

In the October 1937 issue of Current History is an article by Mr. Chamberlin, entitled "Asia's Irrepressible Conflict," from which I shall quote a few paragraphs:

> * * * 1933 witnessed the incorporation into the new Japanese-protected state of Manchukuo of Jehol, with its rich coal mines and its strategic mountain passes leading into the north China plains. At the same time, under the provisions of the Tangku Truce, a demilitarized zone, where China was not permitted to maintain any troops, was created between Manchukuo and north China * * *.

He further stated that—

> * * * the process of nibbling away at north China was resumed with vigor in 1935. Threats, accompanied by suggestive troop concentrations on the border of Manchukuo, were sufficient to bring about the evacuation of the troops of the Northeastern Army which had been stationed in north China * * *.

He refers to the so-called Ho-Umezu agreement, which laid down the rule that central government troops should not move north of a certain line, and that with the removal of the central government troops Japanese pressure for the creation of some kind of autonomous status for north China was redoubled. Toward the end of 1935 the Hopei-Chahar council, headed by Gen. Sung Che-yuan came into existence. Japan regarded this body as a semi-independent regime for the Peiping-Tientsin area; the Nanking Government, on the contrary, insisted that it was merely a local administrative body, subordinated to the central authority. Pressed in this way by two sides, the council dragged on a troubled existence until its regime was definitely overthrown as a result of the Japanese military offensive in July.

The writer then refers to the forces coming from Manchukuo driving out the Chinese forces and thus creating another enclave where Japanese military influence was predominant. He says:

> * * * The process of penetration went further in 1936. In the spring of that year Japanese forces took the very significant step of substantially increasing the garrison which, along with other powers, it is permitted to maintain in the Peiping-Tientsin region under the terms of the Boxer protocol.* * * The strength of the Japanese force was brought up to eight or ten thousand men, outnumbering all other foreign troops put together, and increasing the pressure which could be brought to bear on the Hopei-Chahar council * * *.

Mr. Chamberlin refers to the fact that a broad wedge had thus been driven into Chinese administrative sovereignty in the Peiping-Tientsin region even before the recent hostilities commenced.

I submit, Mr. President, that the article referred to—and I wish Senators would read it—furnishes conclusive evidence

of the purpose of Japan to control the entire territory of China.

Though the telegram I am about to read may not be germane to the point now under discussion, it does indicate the cordial relations between our Government and the Chinese Government. I read from the press release of the State Department on October 16, 1937, as follows:

THE WHITE HOUSE,
October 10, 1937.

It is addressed to:

His Excellency LIN SEN,
Chairman of the National Government
of the Republic of China, Nanking, China:

My fellow countrymen join with me in extending to Your Excellency and to the people of China sincere felicitations on this national anniversary.

FRANKLIN D. ROOSEVELT.

As indicated I read the telegram merely for the purpose of indicating the cordial relations existing between our Government and the Government of China at the time the telegram was sent, and I might add that the same friendly relations, so far as I am aware, exist today.

I have brought to the attention of the Senate, in the course of my discussion of conditions in the Orient, the terms of the Nine Power Treaty to which the United States, Japan, China, and other nations were parties, and the solemn covenant therein that the sovereignty, independence, territorial and administrative integrity of China would be respected, and to the further agreement of the contracting parties that they would refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of a friendly state, and from countenancing action inimical to the security of such states.

The treaty also contains provisions for the adjustment of any controversies that might arise between the signatories. One of the provisions of the treaty declares that:

* * * whenever a situation arises which in the opinion of any one of them involves the application of the stipulations of the present treaty, and renders desirable discussion of such application, there shall be full and frank communication between the contracting powers concerned.

A situation has existed in China for some time, and has now reached an acute form which involves the application of stipulations of the treaty, and certainly renders desirable discussion by the contracting parties in order to adjust any differences that have arisen or may arise. Notwithstanding the solemn pledges made by Japan, she has invaded China, destroyed cities and towns, killed thousands of the inhabitants of China, and announces her purpose to prosecute a destructive and devastating war until China is conquered. She has refused to confer with the other parties to the treaty and has treated in a contemptuous manner the invitation extended by the Belgian Government to participate in a conference called for the purpose of adjusting any dispute between China and Japan. It is difficult to conceive of a more willful violation of treaty obligations and a more contemptuous disregard of the friendly efforts made by interested powers in order to adjust any possible difference and to prevent a continuance of hostilities. Japan has been and is defiant, perverse, and militant in the highest degree. She has increased her armies until they number hundreds of thousands of soldiers, and has strengthened her navy, in violation of treaty obligations. She is constructing capital ships and other war vessels in contravention, as I maintain, of the spirit of the Nine Power Treaty and other treaties entered into at the Washington Conference and other conferences, and for the purpose, apparently, of conducting further military operations in perhaps other fields and spheres of influence.

As I have stated, Belgium was a signatory to the Nine Power Treaty, and the Belgian Government, at the request of the United Kingdom, and with the approval of the American Government, called a conference for the purpose of considering the controversy between Japan and China. An invitation was extended to both Japan and China to attend the conference but Japan refused and still refuses to participate in the conference. China, upon the other hand, promptly accepted the invitation and appeared at the conference and signified her desire and willingness for the conference to examine and pass upon the issues involved.

It is obvious that Belgium was acting in the interest of peace and in conformity with the terms of the Nine Power Treaty and indeed within the spirit, if not the letter, of the Kellogg-Briand Pact, the Four Power Treaty, and the Versailles Treaty. The conference convened at Brussels on November 3, 1937. At the conference our Government was represented by Hon. Norman H. Davis, who was named as a delegate by the President of the United States. I have just referred to article VII of the Nine Power Treaty which provides—

* * * that if any situation arises which in the opinion of any one of the contracting powers involves the application of the stipulations of the treaty, and renders desirable discussion of such application, there shall be full and frank communication between the contracting powers concerned.

Under the terms of the treaty and particularly the article just referred to, either Belgium, Great Britain, or the United States or any other party to the treaty, had a right to call a conference for full and frank discussion relating to any situation involving the terms of the treaty. The United States not only had a right to attend the conference, but in view of the important part which our Government took in the Conference on the Limitation of Armament which, among other things, resulted in the Nine Power Treaty, it was its duty to be represented at such conference. The Senator from California [Mr. JOHNSON], in his address a day or two ago, referred to our delegate as "a peripatetic representative or Ambassador." May I say that Mr. Davis has performed notable service in behalf of our Government as the representative of the President of the United States, and of our Government, in a number of international conferences.

Mr. BONE. Mr. President, will the Senator yield to me for a question?

Mr. KING. I yield.

Mr. BONE. What authority does Norman Davis have to speak either for the President or for the Government of the United States in such affairs as the conference to which the Senator has referred? What authority is there for him to speak, and if he does speak with the voice of authority, how is the Senate of the United States or the House of Representatives to know what he is doing? Perhaps his services are notable, but how are we to know it? He may do something which would compel this body to declare war if he made a mistake of judgment.

Mr. KING. Mr. President, I do not fully agree with the statement of my friend. The United States is a party to numerous conferences, some of which are bilateral and others multilateral. Some of these treaties provide for conferences in the event of any dispute, or in the event that a situation arises which might be provocative of misunderstanding.

My recollection is that last year there were more than 60 international conferences to which the United States sent delegates. There is now a radio conference in session in Cairo, Egypt, and a distinguished Member of this body, the Senator from Maine [Mr. WHITE], appointed by the President of the United States, represents our Government. As I have indicated, there are conferences annually held in various parts of the world, including the United States, for the consideration of labor and agricultural questions, customs, public health and sanitation, marine, and other important matters affecting the relations of many nations and the welfare of the people in all countries.

As I have stated, many of these conferences are held pursuant to treaties which provide that the signatories to such treaties shall be represented at conferences that may be called. Congress has repeatedly made appropriations to pay the expenses of delegates appointed by the President of the United States to attend conferences dealing with a large number of questions directly or indirectly affecting the United States and other nations.

At some of the conferences treaties are formulated and doubtless signed by the representatives of our Government, but such treaties must be ratified by the Senate of the United States. We are familiar with the fact that treaties so negotiated have been rejected by the Senate.

A number of years ago reciprocity treaties with Canada were negotiated by persons named by the President of the United States, but the Senate declined to ratify the treaties, largely upon the ground, as I remember, that they were disadvantageous to the agricultural interests of the United States. President Wilson participated in the Versailles Treaty, which committed the United States as well as other nations to various lines of conduct, but the Senate refused to ratify that treaty. Not infrequently Presidents of the United States have appointed personal representatives to obtain information for them respecting foreign affairs and matters vital to the interest of our country. There are sources of information not always available to ambassadors or ministers—information which our Executive should possess in order to better guide him in policies relating to our country.

President Wilson's personal representative, Colonel House, was in Europe during the World War and before the United States entered the war. He obtained information concerning conditions in Germany and other countries which the President may have regarded as useful in shaping his course as Chief Executive of the Nation.

The Brussels Conference was called to deal with vital questions in the Orient—questions in which our Government is interested—and it was eminently proper; indeed, from my point of view, it was an obligation upon the part of our Government to have representatives at that conference. Mr. Davis, because of his experience, his knowledge of international questions, was preeminently qualified to represent the United States; and, speaking for myself, I am glad that the President named him.

Mr. BONE. Mr. President, will the Senator yield?

Mr. KING. In just a moment. At the Brussels Conference France and Great Britain were represented, as well as a number of other countries parties to the Nine Power Treaty. There were also several other countries represented.

Mr. BONE. The Senator from Utah has indicated that Mr. Davis speaks with the voice of authority as a diplomatic representative of the United States.

Mr. KING. I do not recall that I made that statement.

Mr. BONE. I understood the Senator to suggest that he was a sort of ambassador at large.

Mr. KING. I referred to the Senator from California [Mr. JOHNSON], who stated, as I remember, that Mr. Davis was our peripatetic ambassador at large. I did state that he was the representative of our Government at the Brussels Conference.

Mr. BONE. The suggestion of the Senator covers a wide range.

Mr. KING. I stated in substance that I saw no impropriety in the course pursued by President Roosevelt in appointing Mr. Davis as delegate to represent the United States at the Brussels Conference. Indeed, I stated that the United States being a party to the treaty, and in view of the provisions of the article of the Nine Power Treaty to which I referred, I regarded it as an obligation upon the part of our Government, when a situation arose necessitating a conference of the signatories to the treaty, to send a representative to participate in the conference. I mentioned that aside from treaties calling for conferences our Presidents had not infrequently sent to other countries persons in whom they had confidence to obtain facts and information concerning international plans in which our country was concerned.

Mr. BONE. When a man undertakes to speak with the voice of authority, representing this Government and its President abroad, as Colonel House did during the war—and I may say, parenthetically, that I do not think he made any contribution to peace——

Mr. KING. I hope we will not get into a discussion of Mr. House's activities.

Mr. BONE. I am quite willing to forego even the opportunity to discuss them. I find in the Constitution of the United States a provision that the President shall nominate, and by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers, and consuls. I am at a loss to understand what authority there is anywhere in the law of the land for these "floating" ambassadors. We have heard a great deal of discussion here about respect and reverence for the law of the land. What authority is there anywhere for such a man to represent or to speak for this Government in so delicate a matter as war? A mistake of judgment might lead us into a course of conduct which would inevitably result in a declaration of war. We ought to have the right at least to vote on the man whose actions are under consideration. I think it is a very dangerous precedent to permit such things to go on, not because I object to the individual or challenge his judgment. I think the whole system under which that sort of thing is carried on is wrong. We have a State Department, whose duty it is to handle such matters.

Mr. KING. As I have stated, there is an obligation upon the part of the signatories to the Nine Power Treaty to confer frankly and freely when situations arise which may lead to disputes or conflicts. Our Government is interested in the terms of the treaty referred to, and, in my opinion, should, in every proper way, attempt to secure adherence to the treaty and to prevent military conflicts.

Under the administration of President Harding one of the most important international conferences was held. Senators will recall that the President, in July 1921, directed the Department of State to address an informal inquiry to a number of powers known as the principal allied and associated powers—which is Great Britain, France, Italy, and Japan—to ascertain whether it would be agreeable to take part in a conference on the subject of a limitation of armaments.

The invitation was also extended to Belgium, China, the Netherlands, and Portugal to participate in a discussion of Pacific and far-eastern questions. The invitations which were extended were accepted and the conference held. The President appointed commissioners or delegates, among them Judge Hughes, Senator Lodge, Senator Underwood, and Elihu Root. The President also appointed an advisory committee of 21 persons, among them being Mr. Justice Sutherland, Senator Fletcher, Samuel Gompers, and General Pershing. The Senate was not asked to confirm the appointment of these Commissioners or the advisory committee.

A naval conference was held a number of years ago at Geneva, as I recall, and the President of the United States appointed delegates to attend that conference. It is needless to say that the questions to be considered were of vital importance not only to the United States but to the world. The delegates appointed by the President were not confirmed by the Senate. Later another conference was held at London for the purpose of considering the limitation of the tonnage of naval vessels, particularly cruisers. Delegates to that conference were appointed by the President and the Senate was not asked to confirm their appointment.

As I have indicated, at the conferences referred to agreements might have been entered into and treaties formulated which imposed obligations upon our Government. However, such treaties would have been submitted to the Senate for its approval or disapproval.

Mr. VANDENBERG. Mr. President, will the Senator yield for a question?

Mr. KING. I yield.

Mr. VANDENBERG. The Senator from Washington [Mr. BONE] has raised the point that these "floating" ambassadors may, advertently or inadvertently, commit us beyond the power we may be willing to permit them to exercise. Does the Senator from Utah see any impropriety in Mr. Davis attending one of these conferences—to wit, the International Sugar Conference in London, and attaching to his signature a promise that during the life of the agreement the American Congress will not touch a single tariff

rate involved in the undertaking? Does the Senator think there is any impropriety in such action on the part of Mr. Davis?

Mr. KING. Mr. President, it would depend upon the authority he had.

Mr. VANDENBERG. Could he have authority to make a commitment of that sort in view of the constitutional rights of the Congress?

Mr. KING. If the President named Mr. Davis as his representative or the representative of the United States, to join in negotiating a treaty which was to be presented to the Senate for approval or rejection, and Mr. Davis joined in the formulation of a treaty which imposed obligations upon our Government, the Senate would have the power to reject the commitment or the treaty, or it could attach such reservations as it deemed proper. The Senator knows that all treaties to which our Government is party have not been ratified by the Senate and frequently reservations are attached to treaties which were ratified.

Mr. VANDENBERG. Of course the Senator is correct; and the Senate promptly removed the offending obligation which Mr. Davis had created.

Mr. KING. I agree that the Senate was within its right in so doing.

Mr. VANDENBERG. But does not the point raised by the Senator from Washington [Mr. BONE] still remain? This happened to be a situation that did come back to the Senate for attention. We were in a position to rectify the error. But if "floating" ambassadors are to be loose in the world, without any responsibility to the Senate, some day we may not be able to catch up with them.

Mr. KING. Mr. President, I think the Senator from Washington [Mr. BONE] and my friend from Michigan [Mr. VANDENBERG] are attaching too much importance to what they denominate the work of "floating" ambassadors. I come back again to the proposition which I suggested for which there are precedents, to some of which I have invited attention. During the past few years, because of the disturbed economic and political conditions which have existed, it has been highly important, indeed vitally necessary, that our Government have as full and accurate information as possible concerning such conditions and the trends and currents therein. Such information is not always obtainable through diplomatic channels, that is, by means of our ambassadors and ministers. We all know that a number of powers interested in the Orient would be glad to know what Japan's naval policy is, what war vessels she is building, and the character and tonnage of the same. In order that our Government be fully apprised of situations and conditions in various countries persons in whom the President had confidence have occasionally been named by him as his personal representative to visit various countries in order to obtain in a proper way needed information to aid the Executive in the consideration of international matters.

Reference has been made to Colonel House. It was believed by many Americans that a large part of the German population was not in sympathy with the World War, which had been precipitated by Austria. Colonel House, at the request of Mr. Wilson, went to Germany and other European countries to ascertain as far as possible the actual conditions there existing. He reported to the President from time to time information based upon his observations and contacts with the people. He made no commitments, nor did he intend to make any commitments.

Undoubtedly our ambassadors and ministers in Europe made reports to the Department of State or the President, or both, and the information conveyed of course was important in enabling our Government to meet international developments. However, as I have indicated, all sources of information are not open to our diplomatic representatives, and in an approaching crisis such as that which precipitated the World War, it was the duty of the President to obtain the fullest possible information concerning the state of mind of the peoples of Europe particularly those within the belligerent countries. Accordingly he selected one in whom he had absolute confidence to visit Europe and advise him in respect to matter referred to.

Mr. BONE. Mr. President, will the Senator yield again?

Mr. KING. I yield.

Mr. BONE. One of the things, as I recall, that President Wilson execrated were the secret treaties which were so much a part of the history of the World War and what antedated it.

Mr. KING. I think that that has no relation whatever to the point I am making.

Mr. BONE. I understand that.

Mr. KING. Undoubtedly President Wilson favored "open covenants openly arrived at," but that does not mean that in entering into covenants the parties thereto are to be denied complete information concerning the matters and problems to be dealt with and to be embraced within such covenants. There are many ancillary and apparently extraneous matters, concerning which information is necessary in preparing and agreeing to covenants and treaties—particularly if they relate to important matters affecting their respective countries. Therefore all parties whether individuals or governments, in preparing and entering into covenants should have the fullest information possible concerning not only the heart and soul of the covenants, but also what some might regard as external and extraneous matters.

Mr. BONE. The Senator quoted the exact words that I was going to employ—"open covenants openly arrived at."

Mr. KING. How can covenants be arrived at openly or otherwise, unless all facts are ascertained? Experience in private affairs and in business dealings, demonstrate that contracts are frequently violated because, though the contracting parties dealt honorably with each other, and thought that all material factors were understood and embraced within the contract, conditions arose which brought the contract under the closest scrutiny and it was discovered that one or both of the contracting parties had not been in full possession of all the facts immediate and remote or collateral, which if they had been known, would have produced a contract somewhat different in form and thus avoided misunderstandings or conflicts.

Mr. BONE. In answer to the Senator, I should say that if the Government possessed a proper kind of military intelligence department it would probably be able to supply the President with much more accurate and correct information than any roving ambassador could procure. But that is not the question. Only a few hours ago the Admiral of the Navy testified before a committee of the House of Representatives that we have engagements with Great Britain, and, mind you, those covenants are not "openly arrived at" but secretly arrived at. Members of the Senate have no knowledge of what they are, although they may eventually lead us into war; the Senator from Utah, the Senator from Washington, and other Senators may be compelled to vote "yes" or "no" on the question of war. No one knows what those engagements are. He was asked further about them and he said he could not reveal them because, should he do so, he might be injuring the national defense. If a thing is so important that it might involve the Government in war and involve the whole set-up of national defense, it seems to me that it is not asking too much that our ambassadors, whether they be peripatetic or roving ambassadors or any other kind, should advise the Senate of the United States and the House of Representatives what are the commitments that might some day compel us to send our boys forth with rifles on their shoulders.

Mr. KING. I have not been advised as to the statement made by Admiral Leahy. I do not know his views nor what he recommended. Assume that he did make statements in which he advocated committing our Government to a policy of which the Senator, myself, and other Senators do not approve. Obviously it could not be carried into execution without affirmative action by the President and by Congress. If he advocated a policy calling for a treaty, the Senate would have an opportunity to pass upon his recommendations. If the admiral recommended legislation of any kind, then the

House and the Senate, as well as the President, would be required to consider and act upon the same. The Senator has stated, in effect, that it was not asking too much to require our ambassadors, whether they were "peripatetic" or "roving" or any other kind, to advise the Senate of any commitments made.

Mr. President, generally speaking, full information should be given to Congress concerning matters upon which they are required under the Constitution to act. It is not always possible, when negotiations are being conducted with foreign powers concerning treaties and matters important for the House and the Senate, to be daily or immediately advised of the same. Publicity might prevent attaining a most desirable object. There must be some trust reposed in the President of the United States, in the Department of State, and in those persons selected by the President and the Department of State to conduct conferences. If commitments are made by some ambassador or delegate which binds our Government to a given course of action, the President will be advised, and if the commitment is embraced within the treaty the Senate will be advised, and if general legislation is required or appropriations needed, the Congress and the country will be fully advised.

Under our form of government, international relations are conducted by the executive department. The President negotiates treaties and it is assumed that he will obtain full information before he recommends a treaty. He knows that no treaty may be ratified without a two-thirds vote of the Senate.

As I have before stated, treaties have been negotiated by Presidents committing the Government to certain policies, which were not approved by the Senate. If a commitment has been made by Admiral Leahy or any official of the Navy which affects our international policies, it can have no effect without the approval of the President and ratification by the Senate and it may be of such a nature as to require legislation to give it any vitality whatever.

We have not reached that plane of perfection where mistakes are not made by executive and legislative bodies. Mistakes may be made in our dealings with other nations but we know that our Presidents have, in their dealings with foreign countries, sought to protect the interest of the United States and to deal fairly with all nations.

President Harding, in calling the Washington Conference, acted as he believed for the best interest of our country and indeed the world. I was glad when he called the Washington Conference and upon many occasions have expressed my approval of its work. I have confidence that President Roosevelt will make no commitment nor enter into any treaty which will be disadvantageous to our country.

Mr. VANDENBERG. Mr. President, will the Senator yield?

Mr. KING. I yield.

Mr. VANDENBERG. Pursuant to the confidence the Senator has in the Executive judgment with respect to the foreign situation, am I to understand because the President says the national security requires now a superarmed program that the Senator is going to support it?

Mr. KING. I do not recall the statement of the President referred to by the Senator, to the effect that he requires a superarmed program. I have not meant to state that I will support every view of the President or of any President, but I am of the opinion that President Roosevelt earnestly desires the adoption of policies that will promote world peace. I believe he would welcome an announcement by other nations that they would join in reducing armaments and in uniting upon a program that would tend to remove obstacles to international peace and good will. If a military program should be submitted by the administration which I believed to be wrong and would arouse fears and resentments among nations, and would constitute an obstacle to successful plans for disarmament and peace, I would not support it.

Mr. VANDENBERG. Mr. President——

The PRESIDING OFFICER (Mr. JOHNSON of Colorado in the chair). Does the Senator from Utah yield further to the Senator from Michigan?

Mr. KING. I yield.

Mr. VANDENBERG. How can the Senator determine whether a supernavy and a superarmy are or are not essential to the national security unless he has the complete information regarding foreign policy upon which inevitably the rational and correct answer to the question must rest? Must we not know the foreign policy before we can know the extent of national security that is jeopardized by our arms or lack of them?

Mr. KING. If I were a member of the Appropriations Committee charged with the duty of reporting appropriation bills for the Army and the Navy, and I believed that appropriations were recommended by the Budget or in a special message from the President which I conceived not to be in the interest of our country, and I did not have sufficient information as to the reasons upon which the President based his recommendation, I would feel at liberty to ask the executive department to supply such information as would enable me to vote intelligently upon the question involved.

Mr. VANDENBERG. May I ask the Senator one further question?

Mr. KING. I yield.

Mr. VANDENBERG. The Senator has stated a hypothetical case. Is not the hypothetical case which he states the precise situation in which the Senator and I find ourselves when we are asked now, on the basis of a Presidential generality, to increase the armed forces of the United States beyond any limit that has ever heretofore been known in peacetime? I am not criticizing it; it may be essential; but I am asking the Senator if we have all the information upon which to determine that it is essential?

Mr. KING. Mr. President, if I do not possess sufficient information when the question comes before the Senate to justify me in voting for it, I shall vote against it. I shall want to know whether the stupendous sums urged by some persons are necessary to meet the legal and necessary requirements of the Government.

I appreciate the fact, as, I am sure, my very able friend from Michigan does—and I emphasize the words "very able" because of my high regard for him—that the Chief Executive of the Nation, and the head of our military and naval forces, must make recommendations, and take steps which he conceives to be necessary for the protection of our country, and to enable it to discharge all duties devolving upon it. I can understand that there may be situations in which he may not make known all the understandings which he has and which prompt him in the recommendations which he makes. I can conceive of that, and I would be unwilling to take any step that would hamper the Chief Executive in carrying out approved policies necessary for the welfare of our country.

That does not mean, of course, that in the execution of such policies in which the Senate or the House have some part they should act blindly. Indeed, they should act in the light of the responsibilities resting upon them.

When President Wilson read to the Congress that fateful message which took this Republic into the World War, I did not believe that Congress possessed all the facts within the knowledge of the President and the Department of State. I did believe, however, that Congress did have sufficient information of the aggressions of Germany to enable us to determine the course to pursue, and that view is supported by the fact that the Senate and the House, with practical unanimity, agreed with the President in the recommendation which he had made, though with considerable hesitancy and, as I know, with profound regret.

Mr. VANDENBERG. Mr. President, will the Senator yield?

Mr. KING. Mr. President, I yield.

Mr. VANDENBERG. With the information which was available at that time to the House and the Senate, can the Senator from Utah tell me whether the information included that regarding the secret agreements which had been made among the allied powers of Europe with respect to the award of rewards which were ultimately to be divided up?

Mr. KING. Mr. President, my information is that some of the agreements entered into by some of the allied and associated powers were not made known to the President of the United States or to the Congress. In the light of information revealed after the war, it is my opinion that some of the agreements may not be defended.

Undoubtedly some agreements were entered into in periods of extremity, so far as the allied nations were concerned, for the purpose of obtaining the support of nations which might have allied themselves with Germany and Austria, or at least have afforded the latter indirect aid. We knew enough of human nature to appreciate that when an individual or a nation is in danger, agreements may be entered into for the purpose of securing succor and strength necessary to protect their rights and to enable them to triumph over their opponents. These agreements may not always measure up to the high standard of morality which should guide individuals and nations in their individual and governmental activities and conduct. I am not attempting to defend all agreements entered into during the war. Indeed, in the light of subsequent events I believe some of them were immoral. But I am inclined to think, if we had known of these arrangements we would, though reluctantly, have associated ourselves with the allied nations.

Mr. VANDENBERG. If the Senator will permit me to say so, I am not undertaking to pass judgment on the agreements. I am simply asking the Senator whether the American Congress acts in the presence of adequate information if such important factors as those are lacking in the congressional information.

Mr. KING. Is the Senator referring to things in præsenti, or things in the past?

Mr. VANDENBERG. I am referring to the memorandum, which we now know was in existence, indicating that this was finally not to be a war "to make the world safe for democracy," but to make a very well calculated division of the earth's surface. I do not recall when that memorandum came to the attention of the American Government, and I am not undertaking to speak critically in respect to it. I am asking, if such an agreement was within the knowledge of the executive department of the Government, whether the senatorial and congressional partners in the war responsibility should not have been advised in order to create the adequacy of information for which the Senator has been speaking.

Mr. KING. Mr. President, I do not believe I am in a position to answer that question. First, it is hypothetical. Our Government did not know of these agreements or treaties referred to; and if they had been known, it would have been rather difficult to determine their significance or relation to the contest being waged, or the consequences which would follow our failure to enter the war. The allied nations believed that their very existence was at stake; that if the Central Powers triumphed their liberty would be destroyed and their governments overthrown. In this situation they felt constrained to enter into agreements which, under normal conditions, they would have looked upon with disfavor. It will be remembered that in our own country there was indignation when, after Germany had invaded Belgium, the German Chancellor justified its course by contending that the treaty guaranteeing the integrity of Belgium, to which Germany was a party, was a mere "scrap of paper," and the indignation of the American people increased when news came of the bombing of cities and towns and noncombatants in various parts of Belgium and France.

Senators, do not forget that President Wilson was criticized by no less a person than former President Theodore Roosevelt as well as by many patriotic Americans for what some persons called his pacific attitude during the early part of the war. There was a considerable sentiment in favor of the United States entering the war at least a year before President Wilson came before the Congress and read the message to which I have referred. When our ships were sunk upon the high seas and much of our trade and commerce destroyed by submarines, and Germany served notice that American vessels were not to enter a very large area of the Atlantic Ocean, the American people were so aroused that they insisted that the United States enter the war for the protection of American rights. From my acquaintance with Mr. Wilson I know that he was opposed to the United States entering into the war, but finally he felt constrained to come before the Congress and present the fateful message to which I have referred, only when he believed that both the honor of our country and the interests of humanity were involved.

Mr. President, I do not care to enter into a discussion of the World War, that great tragedy which has left its mark and scars upon this and other lands, but I have been led into a wide detour by the questions of the Senator from Washington [Mr. BONE] and of the Senator from Michigan [Mr. VANDENBERG]. I now return to a discussion of the subject to which I was giving my attention, namely, conditions in the Orient, and particularly the obligations of the signatories to the Nine Power Treaty, the Four Power Treaty, and the Kellogg-Briand Pact. I might add that our Government is largely responsible for the Kellogg-Briand Pact and should be concerned in violations of the same.

A Republican Secretary of State, Frank B. Kellogg, collaborating with Briand, one of the great statesmen of Europe, evolved the Kellogg-Briand Pact, which was communicated to all nations and 64 of them gave their adherence to the same. They regarded it as a great step toward the abolition of war and the promotion of world peace.

Since we were largely responsible for that important treaty, and since both Japan and China were signatories to it, when we see one of them violating its terms, as well as the terms of the Nine Power Treaty which was drafted here in Washington at a conference called by our Government pursuant to a resolution adopted by the Senate of the United States, so far from there being any impropriety in such a course, does not a duty devolve upon our Government to challenge the attention of Japan and the other signatories to the treaty to this flagrant violation of solemn obligations?

Mr. President, when municipal law is violated by a citizen who assaults or threatens to assault his neighbor we appeal to him for peace. We remonstrate with him. We try to settle by pacific means domestic controversies in our neighborhood, in our State, and Nation. In view of the participation of the United States in the treaties which I have mentioned, I regard it as our duty to try to pacify those who likewise are associated with us in the treaties when there is possibility or probability of a conflict among or between them.

At any rate, Japan has violated the treaty. That has been found by the advisory committee of the League of Nations, whose report was adopted by the Council as well as by the Assembly of the League. Representatives of a number of the signatories to the Nine Power Treaty, at the conference at Brussels, found that Japan had violated the treaty.

At that conference, which was called by the Belgian Government, the whole question of the Nine Power Treaty and its terms was taken under consideration. Dr. Koo, representing China, appeared there, and presented to the conference facts showing the infractions of the treaty, and the aggressive course which was being pursued in China by the Japanese Government; and an invitation was extended to Japan and to China to come to the conference and present their views. The conference stated that they desired only to be of aid, if possible, in adjusting any differences, and, if possible, to aid in averting any collision.

Mr. Delbos, representing the French Government, stated at the meeting:

> By addressing to Japan this appeal, to which China had already replied favorably—

That is, that they come and present their views—

> we have no other desire than to assist the two powers to settle by an amicable and effective arrangement the conflict by which they are opposed one to the other. The Japanese reply raises a problem that the conference must consider. In any case no resolution by force could, either in law or in fact, settle in a lasting manner the relations between the two countries; and the peace of the Far East, like the peace of the world, is bound up with respect for international law.

I pause in the reading to remark, Mr. President, that one of the objects of civilized nations is to establish a code of international law, to regulate the intercourse between nations, to indicate the line which may not be crossed without infracting international law or trespassing upon the rights of nations. If the United States is a party to a treaty with other nations, particularly where the treaty calls for consultation, there is an obligation resting upon our Government to attempt to settle the controversy by consultation and by other proper methods.

Mr. Eden, who was present at this conference, stated:

There is another reason for which the Government I represent was willing and indeed anxious to cooperate in this conference at Brussels. We are signatories of the Nine Power Treaty. We believe that there is only one enduring foundation for the preservation of world peace, and that is not national ambitions with alliances or ideologies but a respect for international law and the observance of treaties. By this means, and by this means alone, can the world escape from a further ordeal such as it passed through 20 years ago. This does not imply that we will consider no change at any time in any sphere; such an attitude would be impossible to uphold, for the world is not static. But it does imply that we must be opposed to changes brought about by force and that, if such changes continue to be attempted on whatever pretext, then civilization will proceed by stages of ever-increasing suffering to destruction.

Mr. President, Mr. Norman H. Davis, our delegate to the Conference, delivered an address on the 13th of November which I think is worthy of consideration, and I therefore bring it to the attention of the Senate. It is as follows:

STATEMENT OF THE HONORABLE NORMAN H. DAVIS, AMERICAN DELEGATE TO THE BRUSSELS CONFERENCE, NOVEMBER 13, 1937

I feel that this occasion calls for some general observations. If we do not, from time to time, pause in our consideration of the particular, and reiterate the principles that guide us in their relation to the general, then the impression may gain ground that our policies have less depth or purpose than is in fact the case. We are in this conference very much concerned with peace in one important area of the world, the Far East. It is of vital importance that peace be restored there, not merely for the two participants in the present conflict but for the world at large. The cost in human misery is vast and the material losses are heavy. But even greater is the loss to world confidence and the undermining of stability and security, if the integrity of certain principles which we hold sacred is not preserved. Through a period of centuries the world has developed a system of international law, which is the basis of international morality and conduct and which provides for fair dealing among nations, just as private relationships are based on codes of fair dealing among individuals. When observed this gives a sense of security to nations, enables them to develop their own civilization in their own way, to choose the form of government they desire, and to know that they are free to solve their internal problems without the intervention of outside powers. This is essential for orderly progress in the world.

International law has been written into, and is based upon, a series of international agreements and the cornerstone of progress is the observance of undertakings solemnly given and solemnly received between nations. Change is possible—more than that, it is often desirable—but is legitimate only if carried out by peaceful methods and by mutual agreement. The question we are considering here, in its final analysis, is whether international relations shall be determined by arbitrary force or by law and by respect for international treaties. In fact that seems to be the greatest issue that faces the world today and is one of the most momentous problems that mankind has been called upon to solve. As President Roosevelt expressed it the other day, "those who cherish their freedom and recognize and respect the equal rights of their neighbors to be free and live in peace must work together for the triumph of law and moral principles in order that peace, justice, and confidence may prevail in the world." If the conception of change by violence should prevail, we should be faced by international anarchy; only the concept of respect for law and treaty will give us a world that is secure and wherein good will and confidence can exist and observance of the pledged word is the one immutable foundation on which the structure of world peace can be built. And if, today, I have reiterated this in simple language, it is to emphasize the conviction which is ours that on no other basis can an equitable and lasting solution of the Sino-Japanese conflict be found and in no other way can a just peace be reestablished and be maintained in the Far East.

To come to the specific problem with which we are here immediately concerned: Japan was invited to attend the conference, where we would have welcomed from her a full explanation of her side of the case as to the incidents which led to the outbreak of hostilities as well as the underlying causes of the conflict. She declined. Going one stage further, and in a desire to be considerate of every possible susceptibility, we asked Japan whether she would be disposed to depute a representative to exchange views with the representatives of a small number of powers to be chosen for that purpose by the conference. Such an exchange of views would have taken place within the framework of the Nine Power Treaty and in conformity with its provisions; its aims would have been to throw further light on the various points under discussion and to facilitate a settlement of the conflict. Again Japan's reply is negative. Had Japan accepted, I am confident that we could have been most helpful to her as well as to China, which it was and is our most sincere desire to be.

I am convinced that the only just and durable solution would be a settlement by voluntary, peaceful agreement, which would result in good will and confidence and in mutually beneficial commercial relations. It would, of course, have been desirable had China and Japan been able to compose their difficulties by peaceful negotiation without resort to armed conflict. Unfortunately, however, they did not do so, and their failure created a situation in which the rights and interests of other powers became involved, and which has made still more difficult a peaceful and mutually acceptable settlement by direct negotiation.

From the standpoint of observance of the letter and spirit of treaties to which she voluntarily put her name, from the standpoint of her material self-interest, from the standpoint of world peace and progress and international good will, it would seem that there are compelling reasons why Japan should cooperate in our work. We hope that Japan may still see its way clear to doing so.

Other representatives at the conference expressed views, which were substantially the same as those of Mr. Eden; Mr. Delbos, the representative of France; and Mr. Davis.

After considering the questions involved Japan refused to submit her case or to present her views. The conference submitted a declaration on the 15th of October of last year in which they stated, among other things:

It is clear that the Japanese concept of the issues and interests involved in the conflict under reference is utterly different from the concept of most of the other nations and governments of the world.

That is obvious. Japan's concept is different from that prevailing among other governments of the world.

The Japanese Government insists that, as the conflict is between Japan and China, it concerns those two countries only. Against this, the representatives of the above-mentioned states now met at Brussels consider this conflict of concern in law to all countries parties to the Nine Power Treaty of Washington, of 1922, and to all countries party to the Pact of Paris, of 1928, and of concern in fact to all countries members of the family of nations.

It cannot be denied that in the Nine Power Treaty the parties thereto affirmed it to be their desire to adopt a specified policy designed to stabilize conditions in the Far East and agreed to apply certain specified principles in the relations with China and in China and with one another; and that in the Pact of Paris the parties agreed "that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means."

It cannot be denied that the present hostilities between Japan and China adversely affect not only the rights of all nations but also the material interests of nearly all nations. These hostilities have brought to some nationals of third countries death, to many nationals of third countries great peril, to property of nationals of third countries widespread destruction, to international communications disruption, to international trade disturbance and loss, to the peoples of all nations a sense of horror and indignation, to all the world feelings of uncertainty and apprehension.

Mr. President, this a serious indictment against Japan by this independent conference, which sought only by pacific means, by friendly advice, to bring the two nations into harmonious relations.

I am reading only a part of the statement. It continues:

The Japanese Government has affirmed in its note of October 27th, to which it refers in its note of November 12th, that in employing armed force against China it was anxious "to make China renounce her present policy."

I pause to remark that Japan is determined to make China accede to her wishes and renounce her policy to defend her territory and her citizens against the assaults of an offending nation.

The representatives of the above-mentioned states met at Brussels are moved to point out that there exists no warrant in law for the use of armed force by any country for the purpose of intervening in the internal regime of another country and the general recognition of such a right would be a permanent cause of conflict.

The Japanese Government contends that it should be left to Japan and China to proceed to a settlement by and between themselves alone. But that a just and lasting settlement could be achieved by such a method cannot be believed.

Of course, that is obvious.

Japanese armed forces are present in enormous numbers on Chinese soil and have occupied large and important areas thereof. Japanese authorities have declared in substance that it is Japan's

objective to destroy the will and the ability of China to resist the will and the demand of Japan. The Japanese Government affirms that it is China whose actions and attitude are in contravention of the Nine Power Treaty; yet whereas China is engaged in full and frank discussion of the matter with the other parties to the treaty, Japan refuses to discuss it with any of them. Chinese authorities have repeatedly declared that they will not, in fact that they cannot, negotiate with Japan alone for a settlement by agreement. In these circumstances, there is no ground for any belief that, if left to themselves, Japan and China would arrive in the appreciably near future at any solution which would give promise of peace between those two countries, security for the rights and interest of other countries, and political and economic stability in the Far East. On the contrary, there is every reason to believe that if this matter were left entirely to Japan and China the armed conflict—with attendant destruction of life and property, disorder, uncertainty, instability, suffering, enmity, hatreds and disturbance to the whole world—would continue indefinitely.

A number of the representatives at the Conference submitted their views corroborative of the statement submitted by the Conference. At the conclusion of the Conference—Japan refusing to attend or make any defense or to present her views in any manner—the Conference adopted a report on November 24, 1937. Among other things it called attention to the Nine Power Treaty, and the stipulation in article 1 to which I have heretofore called the attention of the Senate.

Further on in the final Conference report it is stated:

On November 15 the conference adopted a declaration in the course of which it affirmed that the representatives of the Union of South Africa, the United States of America, Australia, Belgium, Bolivia, Canada, China, France, the United Kingdom, India, Mexico, Netherlands, New Zealand, Portugal, and the Union of Socialist Soviet Republics "* * * consider this conflict of concern in law to all countries party to the Nine Power Treaty of Washington of 1922 and to all countries party to the Pact of Paris of 1928 and of concern in fact to all countries members of the family of nations."

The report refers to the communications sent by the conference to Japan and to China, and to the acceptance of the invitation upon the part of China and to the refusal of Japan, and in conclusion states:

1. The Nine Power Treaty is a conspicuous example of numerous international instruments by which the nations of the world enunciate certain principles and accept certain self-denying rules in their conduct with each other solemnly undertaking to respect the sovereignty of other nations, to refrain from seeking political or economic domination of other nations, and to abstain from interference in their internal affairs.

2. These international instruments constitute a framework within which international security and international peace are intended to be safeguarded without resort to arms and within which international relationships should subsist on the basis of mutual trust, good will, and beneficial trade and financial relations.

3. It must be recognized that whenever armed force is employed in disregard of these principles, the whole structure of international relations based upon the safeguards provided by treaties is disturbed. Nations are then compelled to seek security in ever-increasing armaments.

I might add by way of parenthesis that if the administration is now seeking for larger appropriations for naval and military purposes, it is influenced, no doubt, by the belligerent attitude of Japan, her refusal to abide by treaties, and her ruthless destruction of the lives of innocent people in China—noncombatant men, women, and children—and her apparent determination to continue the invasion of China until she has subjugated the people and brought the entire area of China under her jurisdiction.

When one nation such as Japan runs amuck, challenges international law, and violates treaties calling for peaceful solution of controversies, obviously other nations will feel constrained to adopt such measures as they deem necessary for their protection.

The report further states:

4. It was in accordance with these principles that this conference was called in Brussels for the purpose, as set forth in the terms of the invitation issued by the Belgian Government, of examining, in accordance with article VII of the Nine Power Treaty, the situation in the Far East and to consider friendly methods for hastening the end of the regrettable conflict now taking place there.

5. Since its opening session on November 3 the conference has continuously striven to promote conciliation and has endeavored to secure the cooperation of the Japanese Government in the hope of arresting hostilities and bringing about a settlement.

The report then refers to the failure of Japan to respond and to participate in the conference, and continues as follows:

7. This conference strongly reaffirms the principles of the Nine Power Treaty as being among the basic principles which are essential to world peace and orderly progressive development of national and international life.

8. The conference believes that a prompt suspension of hostilities in the Far East would be in the best interests not only of China and Japan but of all nations. With each day's continuance of the conflict the loss in lives and property increases and the ultimate solution of the conflict becomes more difficult.

9. The conference therefore strongly urges that hostilities be suspended and resort be had to peaceful processes.

10. The conference believes that no possible step to bring about by peaceful processes a just settlement of the conflict should be overlooked or omitted.

The report then suggests the propriety of abandoning further efforts for the present, but that it be called together again whenever its chairman or any two of the members shall have reported that they consider that its deliberations can be advantageously resumed.

Since that time Japan has not only indicated no desire to participate in the conference or to adjust her differences with China; but she persists in her aggressive war measures, and is today waging a campaign more aggressive and devastating than ever before.

It is apparent, therefore, Mr. President, that unless there shall be some interposition by other nations, China will continue to be the victim of Japan's aggression. What the final outcome will be no one can tell; but China, unprepared for war, lacking in the mechanics of war, guns, tanks, and airplanes, may not be able at the present time to successfully meet the invading foe.

I have here an article from the National Review, which was written by Mr. J. O. P. Bland, who is thoroughly familiar with conditions in China and in the Orient, which substantially corroborates the views expressed in the report of the conference to which I have just referred.

Mr. President, I have before me hundreds of articles and statements from important journals and newspapers published in the United States and in other countries, in which the conditions in Japan and China are discussed. Substantially all of them condemn Japan as a treaty violator and denounce her course in waging a brutal and cruel war in China. Many of these publications describe the aggressive and, indeed, malignant course pursued by the Japanese in China and the atrocities committed by Japanese troops in Nanking as well as in other parts of China. All condemn the bombng of cities and towns, and partcularly where military operations were not being conducted. Among the articles and publications which I have before me are a number dealing with the destruction of the American boat *Panay* and the assaults upon American citizens. I shall not ask permission to insert these articles and publications in the RECORD, because it would fill hundreds and hundreds of pages in the CONGRESSIONAL RECORD. I can only say that they disclose the wanton and unjustifiable war carried on by Japan.

In the morning Times of yesterday appears an article written by Mr. Clarence K. Streit, a newspaper correspondent of ability and integrity, in which he states that the situation in China has evoked and continues to evoke the interest of the League of Nations.

I ask to have inserted, without reading, a portion of the article referred to:

The League of Nations session closed today with the Council's adoption of a resolution reaffirming the Geneva position in favor of China and with the indefinite adjournment of the committee on League reform after the adoption of a brief noncommittal report to the September Assembly. The text of the Council's resolution follows:

"THE COUNCIL

"Having taken into consideration the situation in the Far East,

"Notes with regret that the hostilities in China continue and have been intensified since the last Council meeting,

"Deplores this deterioration in the situation the more in view of the efforts and achievements of the National Government of China in her political and economic reconstruction,

"Recalls that the Assembly, by its resolution of October 6, 1937, expressed its moral support for China and recommended that

League members refrain from any action which might have the effect of weakening China's power of resistance, thus increasing her difficulties in the present conflict, and should consider how far they can individually extend aid to China,

"Calls the League members' most serious attention to the terms of the above-mentioned resolution,

"Is confident that those states represented on the Council for which the situation is of special interest will lose no opportunity for examining in consultation with other similarly interested powers the feasibility of any further steps which may contribute to a just settlement of the conflict in the Far East."

Mr. President, I stated at the beginning of my remarks yesterday that it had been my purpose to discuss some of the legal phases of the so-called antilynching bill, and also the increased demands for the assertion by the Federal Government of power over the States and individuals. I had intended commenting upon the aggressive policies of the Federal Government which would result in weakening the States and which if persisted in would change our form of government. I intended to refer to the activities of many groups and individuals to force socialistic policies upon the Government and the unfortunate effect which it was having in diverting the minds of the people from local self-government and the responsibilities resting upon them, but I was led to a consideration of the situation in China and Japan for the reason stated in the beginning of the remarks which I submitted to the Senate on February 2. I shall, before the debate upon the so-called antilynching bill is concluded, seek an opportunity to discuss some of the provisions of the measure before us and to present arguments showing its unconstitutionality.

PREVENTION OF AND PUNISHMENT FOR LYNCHING

The Senate resumed the consideration of the bill (H. R. 1507) to assure to persons within the jurisdiction of every State the equal protection of the laws, and to punish the crime of lynching.

Mr. BILBO. Mr. President——

The PRESIDING OFFICER (Mr. ELLENDER in the chair). The Senator from Mississippi is recognized.

Mr. BILBO. I understand that it is the desire of the Senate to recess until Monday, and I express the hope that I may have the floor on Monday by unanimous consent. I have some very important and glorious news on the pending question which I desire to give to the Senate and to the country. It is really the first ray of light we have had since this question has been under discussion. I ask to have the floor by unanimous consent on Monday.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Mississippi?

Mr. CLARK. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CLARK. How many times has the Senator from Mississippi spoken during this legislative day on the pending question?

The PRESIDING OFFICER. The present occupant of the chair does not think he has spoken at all, because the amendment was amended today.

Mr. BILBO. This is my first speech on the pending amendment.

Mr. CLARK. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CLARK. What is the proposition now before the Senate?

The PRESIDING OFFICER. The amendment offered by the Senator from Florida [Mr. PEPPER] to the amendment of the Senator from Illinois [Mr. LEWIS].

Mr. CLARK. What became of the other amendment?

The PRESIDING OFFICER. It was withdrawn.

Mr. CONNALLY. Mr. President, a parliamentary inquiry. In view of the announcement made by the Senator from Mississippi—and it is the custom to observe those things—if he can secure recognition on Monday without impairing his rights, that will allow the Senator from Kentucky to take the floor now, without carrying that question over.

Mr. BARKLEY. I have no objection to the Senator from Mississippi being recognized on Monday to go on with his speech. I realize that it is late, and there is some disadvantage in starting a speech at this hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. BARKLEY. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER (Mr. ELLENDER in the chair). If there be no reports of committees, the clerk will state in their order the nominations on the Executive Calendar.

THE JUDICIARY

The legislative clerk read the nomination of William R. Smith, Jr., to be United States attorney for the western district of Texas.

Mr. BARKLEY. I ask to have the nomination passed over.

The PRESIDING OFFICER. Without objection, the nomination will be passed over.

The legislative clerk read the nomination of Powless W. Lanier to be United States attorney for the district of North Dakota.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

POSTMASTERS

The legislative clerk proceeded to read sundry nominations of postmasters.

Mr. BARKLEY. I ask unanimous consent that the nominations of postmasters on the Executive Calendar may be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations of postmasters are confirmed en bloc.

That concludes the Executive Calendar.

WILLIAM R. KELLOGG

The Senate resumed legislative session,

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 371) for the relief of William R. Kellogg.

Mr. BAILEY. I move that the Senate disagree to the amendments of the House, ask for a conference with the House on the disagreeing votes of the two Houses thereon, and that the conferees on the part of the Senate be appointed by the Chair.

The motion was agreed to; and the Presiding Officer appointed Mr. BAILEY, Mr. LOGAN, and Mr. CAPPER conferees on the part of the Senate.

RECESS TO MONDAY

Mr. BARKLEY. I move that the Senate take a recess until 12 o'clock noon on Monday next.

The motion was agreed to; and (at 4 o'clock and 3 minutes p. m.) the Senate took a recess until Monday, February 7, 1938, at 12 o'clock meridian.

CONFIRMATIONS

Executive nominations confirmed by the Senate February 4 (legislative day of January 5), 1938

UNITED STATES ATTORNEY

Powless W. Lanier to be United States attorney for the district of North Dakota.

POSTMASTERS

ALABAMA

Wade Hampton Royston, Lafayette.
Ruby E. Page, Woodville.

INDIANA

Ray Long, Bristol.

NEW HAMPSHIRE

Joseph W. Hazeltine, Contoocook.